

# ENVIRONMENTAL ASSESSMENT BOARD



## ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

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VOLUME: 147

DATE: Thursday, May 14, 1992

**BEFORE:**


HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

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ENVIRONMENTAL ASSESSMENT BOARD  
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,  
R.S.O. 1980, c. 140, as amended, and Regulations  
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro  
consisting of a program in respect of activities  
associated with meeting future electricity  
requirements in Ontario.

Held on the 5th Floor, 2200  
Yonge Street, Toronto, Ontario,  
Thursday, the 14th day of May;  
1992, commencing at 10:00 a.m.

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VOLUME 147  
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B E F O R E :

THE HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

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1       ---Upon commencing at 10:06 a.m.

2                   THE CHAIRMAN: Please be seated.

3                   We have now completed 146 days of  
4       recorded testimony and we have spent another eight days  
5       in visits and hearings outside of Toronto. We have  
6       heard nine panels of the proponent's evidence and we  
7       have one more panel to hear from, which one might  
8       estimate would take 15 days for in chief and cross-  
9       examination.

10                  The total, then, to express in hours, is  
11       approximately 800 hours have been spent so far on  
12       hearings. That is exclusive of the time outside of  
13       Toronto.

14                  We have yet to deal following the  
15       completion of Panel 10 with the motion concerning the  
16       Manitoba Purchase, and we then would need to deal with  
17       any other matters that may come up at the conclusion of  
18       Hydro's case. Following that and dependent on how that  
19       resolves itself we would then be in a position to hear  
20       the intervenor evidence.

21                  Now, a great deal of work has been done  
22       by the parties on the organization and timing of the  
23       intervenor evidence, and I would like to express on  
24       behalf of my colleagues our appreciation of the work  
25       and cooperative spirit in which efforts have been made

1 to come to grips with this very difficult matter.

2 This is a hearing that is not a usual  
3 one, both in number of interests involved and the  
4 number of issues that have to be coordinated in order  
5 to reach a decision.

6 I think, looking at it from a positive  
7 point of view, the positions of the two groups that  
8 have formed a joint approach to this is really not too  
9 far apart, although fundamentally it could be expressed  
10 that one group feels that intervention should be  
11 handled on an issue-by-issue basis, whereas the other  
12 takes the position that each party should be able to  
13 present its own case.

14 The range of estimated times range from  
15 750 hours to just short of 1,200 hours at the other  
16 extreme. Translated into days, that is 150 hearing  
17 days as opposed to 240 hearing days.

18 I don't know what others feel, but we did  
19 about 144 days in one calendar year, which given all  
20 the circumstances was, I think, not too bad, and I  
21 think one might say that it would be reasonable to  
22 assume that to do 150 days of intervenor hearings would  
23 probably take one calendar year. 240 days would take  
24 more than that, of course, and each month is not the  
25 same - summer months are different than September to



1 June - but, roughly speaking, one would expect that the  
2 extra time would probably be about seven months.

3 Turning this into hard reality, the  
4 earliest that one could contemplate the intervenor  
5 cases beginning would be in the middle of August of  
6 this year, and those parameters would then translate  
7 into completion of the intervenor's cases by about  
8 September, '93 or April, '94.

9 Following that, of course, there will  
10 have to be -- there may be, I don't say 'have to be',  
11 there may be reply, there will be summations by the  
12 parties, and then, of course, the decision will have to  
13 be made.

14 That will probably take in total at least  
15 six months.

16 Now, as I have said many times and you  
17 are tired of me saying it, the primary purpose of this  
18 process is that there be a good result in the public  
19 interest, and part of that, a very important part of  
20 that, is that the decision is made within a reasonable  
21 time and with reasonable cost.

22 In a very real sense, the process here,  
23 the public participation process in matters of public  
24 policy, is on trial. If the process isn't viable,  
25 then, of course, there may have to be other ways of

1 reaching these decisions.

2 I think today we want to hear from you on  
3 the timing and organization of the interventions. I  
4 think you are entitled. We want to hear your  
5 expectations, but I think you are also entitled to hear  
6 the expectations of the Panel from you, and we want to  
7 exchange those views today in an informal way perhaps,  
8 and then we will try and come up with some suggestions  
9 which we will give you an opportunity to then comment  
10 on, much like we did for those of you who were involved  
11 in it with the costs matter. I think we did use that  
12 process; it is a much more difficult matter, but much  
13 the way we did with the costs issue.

14 Now, we have some thoughts about these  
15 things, and when I say from now on I think I have to  
16 say it is largely -- very preliminary, very personal  
17 perhaps in some cases, and certainly not carved in  
18 stone or coming ex cathedra. It is just some things  
19 that we have been kicking around, and I thought if I  
20 should perhaps mention them now then perhaps some of  
21 you who are going to be making submissions today would  
22 have an opportunity to refer to them if they felt they  
23 wished to do so.

24 We have, as you know, a motion to deal  
25 with the Manitoba Purchase as a separate issue, and one

1 thought might be that in order to test the proposals  
2 that have been made we might deal with the Manitoba  
3 issue as a separate issue but deal with it in the  
4 context of an intervention process. That would give us  
5 an opportunity to see how we could organize the  
6 participation by the intervenors and work on perhaps  
7 both ways of doing it and see how that would work out.  
8 This is a matter that we haven't completely thought  
9 through, but it is just one thing that we might think  
10 of doing.

11 We have had a request from a number of  
12 parties to hold hearings outside Toronto.

13 [10:16 a.m.]

14 This is going to be quite disjointed from  
15 now on because these remarks don't come in any logical  
16 order, but we have had suggestions about hearings  
17 outside Toronto and, of course, as I think we have  
18 always said that we recognize the validity of such  
19 requests. On the other side, of course, there are  
20 significant logistical problems involved in conducting  
21 a hearing in different parts of the province and one  
22 cannot overlook in these days, and the public would not  
23 expect us to overlook, the costs that would be involved  
24 in doing that. In fact, we, like everybody else, have  
25 limited resources that we can use to do things.

1                   We did think that the meetings that we  
2           held in Moosonee were extremely useful to us and we  
3           hope that they were good for the parties. It did  
4           enable the entire community from the youngest child to  
5           the oldest inhabitant to participate and to express  
6           their views in a very semi-formal but not completely  
7           formal manner in which there was no restriction on what  
8           was said and enabled the people doing it to express  
9           their views in the fullest way.

10                   We are considering that we would do two  
11           further trips to the northern part of Ontario in the  
12           course of the remainder of the hearing and that we  
13           would expect that each of those would take about one  
14           week or five working days.

15                   Another matter we have been considering  
16           and that is that we have been sitting here in the  
17           traditional court hours of ten to five. There may be  
18           some merit in organizing evening cases to adopt the  
19           practice of other forums and sit in the morning only  
20           and not sit in the afternoon, thereby giving people to  
21           digest and prepare for the following day. That would  
22           entail, of course, starting a little earlier than ten  
23           o'clock but speaking personally no earlier than  
24           eight-thirty. I would find it very difficult to be  
25           here any earlier than that.



1                   Sitting over the whole matter is of  
2       course the matter of cost. I think everybody is  
3       involved and concerned about that and it is a very  
4       legitimate and proper concern and the implications --  
5       this hearing was funded on the basis of a two-year  
6       hearing but the impact of Exhibit 452 and the change  
7       that entailed may and probably did have some impact on  
8       the funding situation.

9                   But it must be recognized at once that if  
10      we are going to do our principal task, which is hearing  
11      the evidence and making our decision, we can't afford  
12      to spend very much time on funding issues. The one  
13      palliative of that might be another interim cost  
14      exercise of perhaps not -- within about six months'  
15      time, that's one thing we are thinking of doing that  
16      might be of some assistance.

17                  We would expect that most evidence of  
18      intervenors would be done in the same way as Ontario  
19      Hydro did theirs; that is, there was unrestricted  
20      ability to put in documents as early as possible; and  
21      the evidence given in direct would then be given in an  
22      overview manner. I haven't calculated it out  
23      precisely, but I don't think Ontario Hydro in giving  
24      its direct evidence took more than 20 days. It may not  
25      have taken that long, but as expected, that would

1       happen also with the intervenors.

2               Cross-examination may be different too.

3       I think that there is no question that every party has  
4       a right to ask questions of the proponent, but I think  
5       it does not follow that every party has a right to  
6       cross-question every intervenor and I think there is  
7       going to have to be some direction and discipline  
8       imposed in that.

9               A number of things come to mind, the  
10       so-called sweetheart cross-examination to bolster up  
11       evidence already given, the repetitious  
12       cross-examination by the people in the same interest.  
13       The general rule in a civil procedure is that the  
14       cross-examination cannot be repetitive and we are going  
15       to have to exercise some control on that. It's an  
16       interesting thing. We have been very lax, I think, or  
17       granted latitude perhaps in the scope of  
18       cross-examination of the proponent.

19              When we do try and impose time limits of  
20       course what happens and happens in any process I have  
21       ever been involved in, the cross-examination  
22       immediately improves so that time limits rather than  
23       being a bad thing usually tend to be a good thing.

24              I think the bottom line where we are  
25       really looking at and we are trying to be realistic is

1       that we would like the interventions to start this fall  
2       and we would like them and the participants to be over  
3       before next summer break; that is, the end of June  
4       1993. We would like the arguments to be finished by  
5       October and then we would be in that position to be  
6       able to complete our decision within, I think, what  
7       would be a reasonable period of time.

8               We have set ourselves a tight deadline of  
9       that which I will not disclose, but I consider it a  
10      very tight, very tight deadline. I am not even sure it  
11      is a possible one but that is what we have in mind.

12             Now those are in the way of preliminary  
13      remarks. I don't know whether....

14             MS. PATTERSON: I just wanted to make one  
15      comment about the out-of-town hearings as they are  
16      called. I think there might be some problem with the  
17      terminology that we have been using because I think  
18      satellite hearings, as they have been described for the  
19      Timber Management Hearing, have really been almost the  
20      same as our, what we call, visits, although there have  
21      been transcripts, and I think that's really the only  
22      distinguishing factor because it seems like the groups  
23      who want us to travel to the North don't want extensive  
24      expert evidence given there or extensive  
25      cross-examination. So what we are really doing is

1       hearing from the people in those communities.

2               So I would like us to try to start off on  
3       a common definition of what when we mean by satellite  
4       hearings when we talk about them.

5               THE CHAIRMAN: I haven't given any  
6       thought of how we should now proceed. Are there any  
7       persons who plan to make submissions. Perhaps we can  
8       take a list and then work out an order.

9               Mr. Shepherd. Mr. Poch. Ms. Kleer.  
10       Just a moment now. Mr. Greenspoon. Mr. Moran. Mr.  
11       Mark. Mr. Power. Mr. Campbell, of course. Mr. Hamer.  
12       Ms. Marlatt.

13              MR. MATSUI: M-a-t-s-u-i.

14              THE CHAIRMAN: You represent?

15              MR. MATSUI: Canadian Nuclear  
16       Association.

17              THE CHAIRMAN: Thank you.

18              Mr. Rodger. Mr. Mattson.

19              Anybody else? That doesn't mean that you  
20       can't when you hear -- Mr. Taylor. This doesn't mean  
21       you are foreclosed later on if you hear something that  
22       you want to comment on.

23       [10:27 a.m.]

24              Is it fair to describe them as the A  
25       group and the B group? I don't know whether that means

1       that one is the better than the other; but is that a  
2       fair way of describing it?

3               MR. D. POCH: I fear that will lead to  
4       confusion as I already can't remember who A is and B  
5       is.

6               THE CHAIRMAN: Well, I can't either.

7               MR. D. POCH: I think it's fair that both  
8       camps have, I think, agreed to terminology as those who  
9       are seeking. Those in favour of the major supply or  
10      those who demand it, if you will, or opposing supply.

11              THE CHAIRMAN: Why don't you start. Will  
12      that be all right?

13              MR. D. POCH: That's right. That's fine.  
14      I understand that Mr. Campbell has suggested that he  
15      has a few concerns thought he might place on the  
16      record.

17              THE CHAIRMAN: All right.

18              MR. D. POCH: I don't know if he wanted  
19      to proceed so he could.

20              THE CHAIRMAN: All right. That would be  
21      fine.

22              MR. B. CAMPBELL: I'm prepared to do it  
23      whatever way is efficient.

24              THE CHAIRMAN: No, that's fine.

25              MR. B. CAMPBELL: I think we have now had



1 a chance to look at these. If the parties were  
2 agreeable, I would sort of give our reaction rather  
3 than have to come back through once I'm finished. But  
4 I'm rather indifferent on the matter.

5 THE CHAIRMAN: Why don't you start while  
6 you're on your feet?

7 MR. B. CAMPBELL: Like the panel, Mr.  
8 Chairman, we have reviewed these submissions and did  
9 want to compliment the intervenors on the work that has  
10 gone into coordinating those responses. It certainly  
11 has made it far easier for us to turn our minds to  
12 where we may have an interest in these matters.

13 And rather than step into the details of  
14 any of the particular submissions, I would like to step  
15 back and take just a somewhat wider view. I think you  
16 have spoken to a number of the considerations that come  
17 into play on this matter. And I think it would be fair  
18 to give Ontario Hydro's perspective on those areas.

19 And as a result, I guess there are really  
20 five areas that I would like to address, and I'll go  
21 through them now. The first one has to do really with  
22 the necessity to get through the process in a  
23 reasonable time. And I can do no more than reinforce  
24 what you have already said on behalf of the Panel in  
25 that regard.

1                   We just took a look kind of roughly at  
2       the kinds of schedules that we were looking -- that we  
3       saw represented in the submissions. If, for instance,  
4       you said 18 months for intervenors cases, even putting  
5       aside the question of working in holiday times and so  
6       on, if you say 18 months for intervenor cases starting  
7       in the early fall, that would take a decision well into  
8       1994. And then one has to worry about cabinet appeals  
9       under this process and a variety of other matters that  
10      could arise, with the result that before a decision is  
11      finalized we could easily be over five years from the  
12      date of the original application.

13                  For Ontario Hydro, that obviously is a  
14      major concern. I might just add that in terms of time,  
15      generally you indicated that we had suggested we might  
16      take up to 20 days in direct. I, of course, have tried  
17      to keep track of this as we have gone. We have taken  
18      just, you allow sort of breaking it into closest  
19      quarter days, we have taken about 13 days so far and  
20      expect to take two for Panel 10.

21                  I think we have tried to discipline  
22      ourselves in this regard and I think we have stayed  
23      under the kind of limit, well under the kind of limit  
24      we have set for ourselves at the beginning. But the  
25      timing, the length of time is for Ontario Hydro is

1 major concern for reasons that I think that you have  
2 already articulated.

3 The second area that I want to deal with  
4 is really the need to get some understanding of the  
5 case that Ontario Hydro has to meet, if you will, or to  
6 put it in less formalistic or litigation oriented  
7 terms, which perhaps aren't really appropriate in these  
8 circumstances, simply to get a handle on the positions  
9 and the actual evidence to be called by the  
10 intervenors.

11 The Board will be fully aware that there  
12 has been, for the purposes of consulting work, funding  
13 of awards totalling some \$15 million. That work was  
14 scheduled at the time the awards were applied for and  
15 made over the 1991 and 1992 period and included, of  
16 course, provision for time for those witnesses who were  
17 preparing their reports or those consultants who were  
18 preparing the reports to actually appear at the hearing  
19 and present them. All of that was sort of allowed for  
20 in that \$15 million figure.

21 And it is our view that the reports, that  
22 body of work, whatever it is, should be well advanced  
23 and that it certainly would be a reasonable expectation  
24 on behalf of the panel to expect to be able to see that  
25 work filed at least by September.

1                   In Ontario Hydro's view, in conducting  
2     that case, I think we really need to see all of that  
3     body of material for really two reasons. I think it's  
4     very difficult for the Board to plan the balance of the  
5     case without knowing what it is they have to deal with.  
6     It may be that in all of this range of material there  
7     are clear themes or re-enforcing themes that can be  
8     done; maybe. It may not be.

9                   But until you have some idea of actually  
10    what you have to deal with, it's sort of like  
11    proceeding in litigation with no statement of defense.  
12    You really have no hard picture of what it is you are  
13    going to have to deal with because the essence of the  
14    information and data and analyses will, I assume, be  
15    contained within the body of this funded analytic work.

16                  Now, in that regard, of course, it's a  
17    concern to Ontario Hydro. It has heard that there may  
18    be supplementary funding applications. And Ontario  
19    Hydro, again, takes the position that really until you  
20    have seen the body of material that's been done, in  
21    light of that body of material taken a view as how best  
22    to proceed with the case, that it's really impossible  
23    for you to deal in an effective or comprehensive way  
24    with supplementary funding applications.

25                  And really for all of these kinds of

1 reasons, we are very strongly in support of the  
2 Government of Ontario position that the work that has  
3 been funded needs to be produced and brought forward at  
4 as early a date as is reasonable.

5 I might just mention here that there's  
6 been mention this morning of the timber hearing.  
7 Certainly it was the experience on that hearing that  
8 until the evidence in this case, in that case it  
9 happened to be the particular evidence of the proponent  
10 which was produced, in effect, being produced seriatum  
11 as they went through their case.

12 And that process was started into and it  
13 was very quickly realized that unless the body of  
14 material that the board was going to consider got put  
15 on the table pretty quickly, both by way of detailed  
16 positions and supporting evidence, that it was very  
17 difficult to make progress in that hearing. And, in  
18 fact, the board in that case adjourned the hearing for  
19 a period of time in order to get the basic information  
20 on the table. Because they felt, and experience has  
21 shown them to be exactly correct, until that happened  
22 it was impossible to make efficient use of hearing  
23 time.

24 And so that process took place. And  
25 similarly I would say here that if in order to achieve



1 the work necessary to get the basic information and the  
2 funded work on the table, that meant that the Board did  
3 not sit again until, or did not deal with substantive  
4 matters until well into September or what other date  
5 people might think. It's very hard for me to suggest a  
6 date because we have no idea of where this work sits.

7 [10:36 a.m.]

8 But if that means that you have to take a  
9 small, a small break from dealing with substantive  
10 matters in order to do that, in my submission  
11 experience has shown that that would be time well  
12 taken, that if you start into this without the full  
13 body of material on the table the inefficiencies are  
14 enormous. And I think the Board's current processes in  
15 other cases really reinforces this.

16 There is a growing pressure in cases  
17 before this Board to have not just the proponent's case  
18 but the intervenors' evidence and full exchange of  
19 interrogatories before one gets into the actual use of  
20 hearing time in front of the Board, in front of the  
21 Panel, and I think, again, the reasons for that are the  
22 same kinds of reasons and are compelling.

23 It is very difficult to deal efficiently  
24 in a hearing when every day that goes by brings in a  
25 whole new set of information that is relevant to the

1 issues.

2 Now, turning to my third area, we have  
3 looked at the question, the two basic proposals that  
4 are before you, which I will classify probably at my  
5 peril as being an issue-by-issue approach and an  
6 intervenor-by-intervenor approach.

7 I think we have a general view, although  
8 I would call it preliminary, on this matter that leans  
9 us in the direction of the issue-by-issue approach, and  
10 I think some of the statements of the reasons for that  
11 are not only contained in, I gather, the submission  
12 that Mr. Mark will be speaking to but can also be found  
13 in the transcript of these proceedings when there was  
14 an argument about phasing of the hearing at the  
15 beginning.

16 If the Board would go back and -- I don't  
17 want to take you through it because it is all in the  
18 transcript, but look at pages 230 - I can't believe  
19 there was ever a time when there were three-digit  
20 transcript pages, but there was such a time - pages 230  
21 through about 250, there are submissions there from Mr.  
22 Poch, Mr. Greenspoon, Mr. Shepherd that give a  
23 rationale in support of arguing for phasing. I think  
24 many of those same points support the view of moving  
25 through the evidence on an issue-by-issue basis.

1 MS. PATTERSON: So has each side changed  
2 its position now, since you were arguing against that  
3 approach at the beginning when they were arguing for  
4 it? [Laughter]

5 MR. B. CAMPBELL: I think we took the  
6 position then that it was sensible to move through the  
7 proponent's case in a full basis so that you had  
8 complete exposure to the range of issues before you.  
9 We are after all responsible the full range of issues,  
10 and the intervenors have tended to focus in different  
11 areas.

12 I do not blush at all in making this  
13 submission, nor do I think I should.

14 Our sense is that at this point it will  
15 be easier for the Board having now had broad exposure  
16 to the issues across the whole application to now in  
17 terms of getting through to the point where you want to  
18 write a report to say, all right, we want to focus  
19 on -- there seem to us, having now heard 15 days of  
20 direct, and if I take the Chairman's number of 15 days  
21 of cross-examination for Panel 10 then it will be  
22 approximately 15 days of direct and 150 days of  
23 cross-examination, you must by now have a sense of the  
24 issues that the intervenors are focussing on and so on,  
25 and use that to say, all right, I doubt you would write

1       your report on an intervenor-by-intervenor basis; you  
2       will deal with issues areas, and it seems to me that at  
3       this point having had the exposure that you have had  
4       over the last year that to focus the evidence in a way  
5       that kind of parallels the way you will come at it in  
6       writing a report which would be most useful to you.

7                   And again, though, I would emphasize that  
8       we really don't see how you can make a meaningful final  
9       judgment on this without knowing in some detail the  
10      actual cases you will be having to deal with and the  
11      range of the evidence that is going to be presented.

12                   So I guess our bottom line is that we are  
13      unwilling to sort of commit fully, to argue fully, one  
14      way or the other because we don't know what we are  
15      dealing with in the end, and you need to know that. We  
16      have descriptions and so on, but until you actually see  
17      the reports, the evidence, the positions that are being  
18      taken I think it is very difficult to settle this  
19      question finally.

20                   I tried to explain that we do have a lean  
21      in one way, but we really don't want to take a final  
22      position on that until we have seen what it is we are  
23      dealing with.

24                   Now, there are two other brief matters I  
25      should deal with, and my fourth matter is simply to

1       note that we have no objections to reasonable proposals  
2       for hearing evidence in the North. I think the Panel  
3       has outlined the kinds of considerations that go into  
4       that. I do not read anything in the submissions that  
5       have come in that is insensitive to those kinds of  
6       considerations, and again, we have no objection in  
7       principle to some effort to accommodate those.

8               Finally, and it is perhaps in some sense  
9       the least important point but I say it for  
10      completeness, one of the two major proposals before you  
11      suggests an allocation of 20 hours for reply. I should  
12      not, in doing my job, let that pass without some  
13      comment.

14             It is our submission that you should make  
15      no order in that regard. Again, I would emphasize that  
16      there is \$15 million worth of analysis that we haven't  
17      seen yet, and, in my submission, you can't possibly  
18      make any meaning of conclusion, or I can't reach any  
19      meaningful conclusions or make any meaningful  
20      submissions on the time required for reply until we see  
21      that information.

22             I think those are the matters that we  
23      wanted to deal with briefly.

24             THE CHAIRMAN: Are you going to be first,  
25      Mr. Shepherd? All right.



1                   MR. SHEPHERD: Mr. Chairman, I have the  
2                   pleasure of introducing a motion on behalf of what is  
3                   now 64 parties.

4                   THE CHAIRMAN: Well, I don't think we  
5                   should deal with it in that formal sense, Mr. Shepherd.  
6                   I don't think we will deal with it in a formal motion  
7                   sense. This is discussion really more than anything  
8                   else.

9                   MR. SHEPHERD: I understand, Mr.  
10                  Chairman. However, there is a proposal before you, and  
11                  I would like to explain it.

12                 THE CHAIRMAN: Oh, no, I have no problem  
13                  with that. I just was having a problem with putting it  
14                  forward as a motion. When you put it forward as a  
15                  motion then we have to structure it and deal with it as  
16                  a formal fashion. I don't want to do that.

17                 That doesn't inhibit you in what you want  
18                  to say, I'm sure.

19                 MR. SHEPHERD: Thank you, Mr. Chairman.

20                 I am speaking on behalf of what is now 64  
21                  parties.

22                 The Canadian Association of Energy  
23                  Service Companies, as you know, has decided to support  
24                  the MEA group's position and has advised you of that, I  
25                  think. My job thankfully is simply to explain it. The

1       submissions in support of it will come primarily from  
2       Mr. Poch, although I understand others will be  
3       commenting.

4                       The agreement that is before you in the  
5       proposed order we are asking you to make flowed out of  
6       the very good working relationship between many of  
7       these parties that started as far back as the funding  
8       process, including a formal agreement between several  
9       parties on production modelling, a number of agreements  
10      on cross-reliance on experts, several agreements along  
11      the way about the order of cross-examination, about the  
12      division of responsibility during cross-examination.  
13      We have just recently made another agreement between  
14      several parties on division of cross-examination and  
15      responsibilities for Panel 10.

16                      And that has been working very well.

17                      As a result of that, these parties  
18      entered into a formal agreement - I should tell you  
19      that getting a formal agreement was not an easy task -  
20      saying, in effect, let us continue to arrange things  
21      efficiently between us, and we will bind ourselves to  
22      work within a time limit and structure our cases within  
23      that time limit.

24                      That, I guess, leads to the second  
25      underlying rationale or, I guess, genesis of this

1       agreement, and that is while all of the parties to this  
2       agreement I think favour some form of intervenor-by-  
3       intervenor approach, all of them recognize that it has  
4       to be more customized than that, that you can't just  
5       hear the intervenors seriatum as has been said.

6               There will have to be joint witnesses and  
7       joint witness panels, and we all recognize that because  
8       we have reliance on each other's evidence and because  
9       some things are simply not understandable if you hear a  
10      bit here and a bit there and a bit there. Other  
11      things, however, are not understandable if you package  
12      it a different way.

13             Different issues, different parts of the  
14      case, are most easily presented to the Board and most  
15      easily understood by the Board if they are packaged to  
16      suit the issues.

17             Similarly, we will be relying on each  
18      other's witnesses to a certain extent, and so we may  
19      have to agree to present witnesses out of order.

20             I may have to say to Mr. Poch I am  
21      relying on one of your witnesses for part of my case  
22      but my case procedures, so will you take that witness  
23      and bring him up here out of sequence of your case so  
24      that I can rely on that evidence.

25             There is a lot of things that have to be

1       done like that, all of which is details and none of  
2       which can be effectively dealt with either in the  
3       hearing room or in an overly rigid process. So  
4       basically what we are saying is it has worked to date;  
5       we have been able to get things together to date on a  
6       number of issues, and we want to continue.

7                       That is all I have to say about that.  
8       Mr. Poch will have some more detailed submissions on  
9       that.

10                      Quite separately from that, IPPSO has  
11       made specific submissions on written evidence,  
12       interrogatories and supplementary funding. Those are  
13       in your materials, and I am obviously not going to take  
14       you through it. We don't have that much time. They  
15       are at page, I guess, page 100 of my materials. I  
16       don't know whether yours are numbered.

17                      THE CHAIRMAN: Ours are not numbered.

18                      MR. SHEPHERD: The only comment I would  
19       make is that we have heard already suggestions with  
20       respect to written evidence and when it should be in.  
21       We are strongly in agreement that all of the written  
22       evidence, or at least the main submissions - I don't  
23       think we end all written evidence at a certain date -  
24       but I think at least the main submissions have to be  
25       brought in as soon as possible, and a September date is

1       reasonable for that purpose, because it is not just the  
2       proponent that has to see that; we all have to see that  
3       if we are going to finalize our cases.

4               In my discussions with many parties I, in  
5       fact on the issues that we have raised in our letter,  
6       written evidence, interrogatories and supplementary  
7       funding, I really haven't heard a lot of serious  
8       disagreement about those things so I am not going to go  
9       through them in any additional detail.

10              A third issue I would like to deal with  
11       is satellite hearings, and all I want to do is go on  
12       the record supporting the positions of some parties to  
13       have a total of what appears to us to be approximately  
14       three weeks of formal hearings outside of Toronto. We  
15       believe that that is an essential part of a public  
16       hearing process.

17              THE CHAIRMAN: Well, what do you mean by  
18       "formal hearings"? I just want to make sure we  
19       understand that.

20              MR. SHEPHERD: Real hearings with real  
21       sworn evidence and cross-examination, if necessary,  
22       although I suspect I won't be doing a lot of  
23       cross-examining, and sufficient formality that the  
24       evidence is evidence, that the evidence is not just  
25       talk.



1 THE CHAIRMAN: Well, I think you were at  
2 Moosonee?

3 MR. SHEPHERD: Yes, I was.

4 THE CHAIRMAN: And how would you change  
5 Moosonee from what was done up there?

6 MR. SHEPHERD: I would rather -- I mean,  
7 I will make a comment on that, but I guess I would  
8 rather hear from my friends from the North on that.

9 THE CHAIRMAN: That's right.

10 MR. SHEPHERD: But it would certainly  
11 appear to me that since most of the people involved in  
12 these hearings are southerners and that some part of  
13 that structure must cater to the way that people from  
14 the South understand things, it also have has to cater  
15 to the way the people from the North express things if  
16 those two things are different.

17 [10:50 a.m.]

18 You cannot choose one or the other  
19 because communication involves both sides.

20 The final comment I would make is with  
21 respect to the Chairman's comment with respect to the  
22 time frame. And I am not going to comment specifically  
23 on the time frame you have proposed. It is clear from  
24 our proposal that we are not 100 per cent in agreement  
25 with it.

1                   However, I am very concerned, and I wish  
2                   to express this concern as strongly as I possibly can,  
3                   that in the interests of protecting the process,  
4                   meaning getting a good decision in a reasonable time,  
5                   that we don't throw the baby out with the bath water by  
6                   limiting the participation by the public in the  
7                   process.

8                   More fundamental than getting a timely  
9                   decision in this process or in any environmental  
10                  assessment process, more fundamental is that the public  
11                  be heard and be seen to be heard fully. And if it  
12                  takes two extra months or five extra months to ensure  
13                  that that goal is met, that goal is more important than  
14                  meeting any deadline.

15                  Those are my submissions, Mr. Chairman.

16                  THE CHAIRMAN: Thank you, Mr. Shepherd.

17                  MS. PATTERSON: Mr. Shepherd, I would  
18                  just like to ask whether your agreement falls apart if  
19                  your time estimates are not accepted?

20                  MR. SHEPHERD: I anticipated this  
21                  question and tried to get answers from people and  
22                  nobody would answer me.

23                  I think the practical reality is that  
24                  relatively small changes in the time frames probably  
25                  will result in all of the same parties signing on all

1 of the same terms. Very large changes in the time  
2 frames, I think, would cause a number of the parties to  
3 reject the notion that an agreement could be reached.

4 DR. CONNELL: Mr. Shepherd, there are  
5 obviously some signs of attrition in the Coalition as  
6 you anticipate the next few months. What are the  
7 prospects of further attrition? What are the prospects  
8 of bringing other parties into this Coalition? If you  
9 raise the avoided cost by 10 per cent, would you be  
10 able to recruit more parties?

11 MR. SHEPHERD: I see absolutely no  
12 relevance, no relationship to an avoided cost and this  
13 agreement, Dr. Connell.

14 MR. D. POCH: It was an analogy, I think.

15 DR. CONNELL: Let me put it on another  
16 footing then. Are there any measures that you can  
17 conceive of that might bring more parties into the  
18 Coalition?

19 MR. SHEPHERD: Let me come back to the  
20 first question. As far as I know, there has been no  
21 attrition in this group at all. What we prepared  
22 originally was a list of all the people that were  
23 invited into this group. Just as you said that, I  
24 looked down this list and I don't see any of them that  
25 said at any time, we want in, and then decided not to

1 be in it, except for the Canadian Association of Energy  
2 Service Companies. So there has been no attrition.

3 I have had one person contact me today in  
4 fact asking whether they can join this group and I have  
5 said I will speak to them later today to see how that  
6 is arranged. But, yes, I am sure that more people  
7 could be brought into it if we had more time.

8 And we can probably work with some people  
9 who have chosen not to be part of the group for reasons  
10 not associated with the structure itself; for example,  
11 Energy Probe who have already said that they are happy  
12 to work with us and coordinate.

13 MS. PATTERSON: One more question. In  
14 some of the Board's other hearings, it seems that one  
15 of the problems with the intervenor cases is that time  
16 projections are made - in both ways of doing it, either  
17 a phased hearing or an intervenor-by-intervenor  
18 presentation - and the time periods are actually too  
19 long for the intervenor cases. So, if things are  
20 rigidly set, the evidence goes in, there is  
21 cross-examination and then you are off for two days  
22 because there is nobody to fill in, there is no  
23 flexibility to continue the evidence.

24 MR. SHEPHERD: I don't think that there  
25 is any contemplation that the result of this process is

1       going to be a schedule in terms of dates and times,  
2       except in the very loosest sense. I think we hope the  
3       result will be an order but not a schedule. And I  
4       would expect - because there will be cross-examination  
5       throughout as well - I would expect that whoever is  
6       next in line is going to have to be ready, just as has  
7       been the case with cross-examination and everything  
8       else.

9               It hadn't occurred to me that we would  
10       have downtime like that unless we have sort of --  
11       periodically there will be somebody who simply can only  
12       be here on a certain date and we will have to work  
13       around it, but that's usual in any hearing and you try  
14       to fill in the time as best you can to be as efficient  
15       as possible.

16              MS. PATTERSON: Thank you.

17              THE CHAIRMAN: It just occurred to me as  
18       you were talking that the proponent of course has a  
19       discipline situation. They can have their people here  
20       every day and they have done it. It can't be expected  
21       that that kind of coordination is possible with a  
22       diverse group of people who have experts coming from  
23       all over the world perhaps and certainly from various  
24       parts and who have their own time schedules. So I can  
25       see there is going to have to be quite a bit of



1 flexibility in that area in order to make the best use  
2 of the time. I think that everybody probably  
3 recognizes that.

4 One thing we have talked about was that  
5 the evidence in chief, for example, might not  
6 necessarily coincide with the cross-examination in many  
7 cases because of time constraints and so on. But  
8 that's more of a problem for us, I think, than it is  
9 for the parties because I think people have mentioned  
10 that we have to try and have some kind of cohesion in  
11 what we are hearing so that we can properly render a  
12 decision on the issues.

13 I don't know if I am making myself clear  
14 but, for example, an expert coming from California may  
15 have his evidence videotaped, for example, so that it  
16 is available when needed. That's just one way of doing  
17 his evidence in chief for example.

18 MR. SHEPHERD: Mr. Chairman, I would be  
19 surprised, in fact, if this is as big a problem as you  
20 think. We have been doing that sort of thing during  
21 cross-examination because we often get our experts here  
22 and we just sort of keep ourselves attuned to what is  
23 happening and sometimes we have an expert a day late or  
24 a day early but for the most part we have been able to  
25 handle that.

1 THE CHAIRMAN: Right. Thank you.

2 Mr. Poch, would you be next?

3 MR. D. POCH: Yes, thank you.

4 Just on that latter point, Mr. Chairman,  
5 I know when I look back at our intervenor Funding  
6 application award, I realize that's an example of an  
7 area where we allocated a very short period of time for  
8 the attendance of experts. And this will be an example  
9 where it may be necessary to seek some small amount of  
10 assurance or supplementary funding so that we can have  
11 witnesses available for long periods of time on a  
12 standby basis to help the hearing move along.

13 THE CHAIRMAN: Let me give you another  
14 example. There has been much talk about Mr. Lovins.  
15 Now if Mr. Lovins comes to this hearing, he can't spend  
16 probably 10 days being cross-examined, and yet I'm sure  
17 a number of people would want to cross-examine him.  
18 But his time schedule and expense probably wouldn't  
19 warrant that. So there is going to have to be some  
20 organization of that kind of part of the process.

21 MR. D. POCH: Mr. Chairman, that really  
22 flows from your comments earlier about control of  
23 cross-examination. And I think as you will see from  
24 the proposal we offer, we are anticipating very limited  
25 cross-examination within the camp and I think that is

1 the only way this can function, although we won't want  
2 to give up the right to do so because there will be  
3 some critical differences, as I think you have  
4 witnessed already.

5 As to cross-examination of witnesses in  
6 the other camp, I think we are seeing an evolution of  
7 our ability to rely on one another, as counsel get more  
8 or less comfortable with the capabilities of other  
9 counsels and other teams to do a good job on a  
10 particular issue or take a lead on a particular issue.

11 I guess it will have been obvious to you,  
12 for example, that our cross-examination, the  
13 Coalition's cross-examination on panels I think 1, 3, 4  
14 and 9 was much more extensive than on other panels  
15 where we, for example, relied on Mr. Shepherd with  
16 respect to NUGs or some of the native groups with  
17 respect to hydraulic.

18 I think that we will be trying to enhance  
19 that because of course while we all want to have our  
20 day in court, we are all getting a bit worn out and I  
21 think we all recognize that the advocacy of the piece  
22 becomes ineffective if this goes on too long so it is  
23 not in our interest to prolong it.

24 Now, I will speak to this question of  
25 duration a little later, duration overall, a little

1 later in my submissions. But in response to your  
2 particular question, I think it was Ms. Patterson's  
3 questions about whether the deal falls apart if there  
4 is too much of a squeeze. I think the only answer I  
5 could properly give is we would have to go back and  
6 knock our heads together and see if we could still  
7 reach some kind of an agreement given tighter  
8 constraints.

9 To be frank, what we have so far is -- we  
10 had initial estimates of time. We had a sort of a  
11 straw poll about how much people thought they could  
12 shave, and we came up with a proposal which we thought  
13 was tight but we could make work. And of course the  
14 fine details on how we will make it work is something  
15 we haven't worked out. I assume that that holds true  
16 for the other camp as well. But we have attained a  
17 level of confidence, and it would be a bit of a process  
18 simply to see if we could attain a level of confidence  
19 with a different time limit.

20 Turning to the proposal. I think the  
21 primary benefit of our proposal, as we see it, is that  
22 it allows the parties to present their cases in the  
23 manner of their choice, just as the proponent was  
24 allowed to do.

25 And indeed when the Panel made the

1 preliminary ruling with respect to Hydro's case, in  
2 which those comments Mr. Campbell referred you to  
3 appeared, the Panel recognized that a similar freedom  
4 would likely be sought, at least by the parties. And I  
5 think it's important to stop here and note that when we  
6 argued for phasing earlier on, at least my client  
7 envisaged it, and I think this is likely to appear in  
8 the record, as in essence a two-phased hearing.

9 The hope was that a decision after Phase  
10 1 on questions of the methodologies would issue at  
11 least on a preliminary basis and that would shape Phase  
12 2, shorten it, perhaps eliminate it was our hope of  
13 course, and it was that that we spoke of there.

14 In any event at page 276 of the  
15 transcript the Board indicated that it would allow  
16 Hydro to present its case in its entirety and hear  
17 concerns about potential inadequacies in Hydro's case  
18 only after it had completed its case in its entirety.

19 And at page 277 at line 6, the Board  
20 observed and I quote:

21 As to how the hearing would then  
22 proceed following that may be a matter  
23 that we are going to have to discuss  
24 further in more detail when we get down  
25 the line. It may very well be that



1 parties themselves will want to have some  
2 flexibility there and we are certainly  
3 not averse to that.

4 So I think the Board, if I may, has  
5 recognized that it's obviously a desirable goal and it  
6 would be our submission that that goal ought not to be  
7 interfered with, if I may, should only be interfered  
8 with if other factors could be said to be of such  
9 overriding importance as to dictate against such a  
10 presumption. And in fact, as I think you will hear, I  
11 hope you will hear, we submit that the balance of  
12 factors supports rather than conflicts this course of  
13 conduct.

14 And before I launch into my list of why  
15 our proposal is the shiniest, I think it is important  
16 to distinguish between this question of duration and  
17 the question of order.

18 [11:05 a.m.]

19 My initial comments are with respect to  
20 the question of the order. First, the freedom of  
21 choice of parties to present their cases in concert  
22 with others or on their own is maintained. Parties who  
23 are not signatories to our agreement can elect to  
24 organize their cases on an issue-by-issue basis if that  
25 is their preference.

1                   You can expect, I think as Mr. Shepherd  
2                   pointed out, a hybrid from the parties within our  
3                   agreement. It's not our intention or desire to  
4                   interfere with those who desire to proceed on an  
5                   issue-by-issue basis. In our model they are free to do  
6                   so and to interlace their cases to that effect. We  
7                   simply ask for the right not to be forced into that  
8                   pattern, to split up our cases where we don't feel it's  
9                   appropriate.

10                  Second, our approach avoids the imposition  
11                  of a presentation order that reflects a particular  
12                  planning bias. In our model we are not forced to  
13                  present our cases in a manner that mimics the logic of  
14                  the proponent's case, a logic which I think may be  
15                  clear to you many of us don't accept.

16                  And the parties supporting more major  
17                  supply are similarly not required to sacrifice a case  
18                  order that reflects their approach. The other way of  
19                  stating this is, it would be hard to imagine agreement  
20                  on a list of issues or panel topics and an appropriate  
21                  order for them.

22                  Third, we believe our approach is more  
23                  economical. We are not funded to bring witnesses up to  
24                  stand cross on several occasions, which is a likely  
25                  added cost if we cannot organize our own presentations.

1 I think it is fair to say that there is a preponderance  
2 of funded parties in the camp I speak for rather than  
3 where there are some in the others but many who are  
4 not.

5 Part-time parties or full-time parties  
6 who have not found it necessary to be present  
7 throughout, in our model, can come on one occasion to  
8 present their cases rather than on, perhaps, a dozen  
9 occasions if they feel they have something to say on  
10 each of a number of issues.

11 Fourth, our approach will minimize  
12 repetition and shorten the hearings. If an  
13 issue-by-issue approach is taken, parties will feel  
14 compelled to offer some evidence in each area. It will  
15 be an almost irresistible temptation, I would submit.  
16 In our submission, this will lead to duplication or  
17 inefficiency and will lengthen the hearing no matter  
18 what policing efforts we try to impose.

19 I think it will, in effect, create a  
20 debate situation on each and every issue, which might  
21 be attractive in the sense that it crystallizes the  
22 debate. We can acknowledge that. But I think it's  
23 inevitably going to lead to longer presentations and  
24 certainly longer cross.

25 We believe, in short, that the

1 presentations would be shorter, more focussed, and  
2 fewer, which is, I think, the real key economy here, if  
3 parties are free to combine topics as they see fit.

4 Fifth, our approach will allow the Panel  
5 to hear internally consistent cases with related  
6 sections offered in contiguous panels rather than  
7 broken up and intertwined with competing cases, the  
8 logic and progression of which may not be the same as  
9 that of the intervenor whom I speak.

10 The issue-by-issue approach would  
11 separate in time related pieces of the each  
12 intervenor's case. And it's our submission that this  
13 would risk confusion and would not enable meaningful  
14 comparison, although on its face I'm sure it will be  
15 argued that it does allow for meaningful comparison  
16 because you will hear both sides at once.

17 But I would suggest that what you are  
18 likely to hear is competing evidence any one topic but  
19 based on entirely different assumptions which flow from  
20 other parts of the intervenor's case, the structure of  
21 the intervenor's case.

22 So they will be comparable only in the  
23 sense that they have been forced under the same issue  
24 heading but, in fact, not comparable on much other  
25 basis because they will be two pieces out of different

1 context.

2 Six, our approach will reduce the need  
3 for reply evidence. It allows those who oppose supply  
4 approvals to hear the entire case for supply, including  
5 the oral evidence, before commencing their evidence,  
6 hopefully avoiding need for lengthy reply cases or  
7 repeated reply within each and every panel. This  
8 minimizes the need for reply by allowing the majority  
9 of the parties, who are those opposed to more supply,  
10 to answer the full case for supply in their evidence in  
11 chief and build it in from the outset rather than tack  
12 it on and extend it.

13 Also, the case to be met will be  
14 understood before the first party opposed to more  
15 supply begins, thus allowing for a possible redivision  
16 by our group of the time within the agreement without  
17 need for a longer overall time allotment.

18 Our fear is that if we are interlaced,  
19 the scene will change as we go, the agreement we will  
20 all the be working within will become stale and will  
21 either fall apart or require us to come back to the  
22 Board to ask for more time to make it function.

23 Now, with respect to the submissions  
24 supporting the issue-by-issue proposal, we offer the  
25 observations. First, perhaps I could just ask for a



1 clarification, there is a schedule A that's been  
2 included MEA submissions where 19 parties are listed.  
3 And perhaps I could just ask my friend to indicate if  
4 those are parties that have agreed to support MEA's  
5 approach or are simply parties that MEA is assuming are  
6 part of the supply camp or if the two are the same.

7 MR. MARK: We have spoken to all those  
8 parties. We haven't made any assumptions of what our  
9 people do without speaking to them.

10 MR. D. POCH: I'm sorry. I guess I'm  
11 still confused. Are these parties which we can assume  
12 are the list in the camp or are these parties which  
13 have indicated that they will be supporting the MEA's  
14 position?

15 MR. MARK: I thought my answer was clear,  
16 Mr. Chairman. We haven't indicated anybody supporting  
17 the memo unless we have spoken to them and they have  
18 indicated their support.

19 MR. D. POCH: I guess I'm just asking  
20 what schedule A is.

21 MR. MARK: Parties who have indicated  
22 their support.

23 MR. D. POCH: Thank you. And the reason  
24 I pose that question, and I thank my friend for his  
25 assistance is I'm trying to offer my comments in a

1 context. I think it's important to understand the  
2 relative number of parties in the camps. Obviously,  
3 there are different kinds of parties, and I'm not  
4 suggesting, you know, one party equals, you know, a  
5 constant in the formula of how many days or anything.  
6 But I think it's important to understand that context.

7 Now, if I may, the MEA, et al, recognize  
8 that two camps are, indeed, identifiable. Those, as I  
9 would phrase it, supporting supply approvals and those  
10 opposed. And by supply, I'm referring to a larger  
11 supply which requires environmental assessment  
12 approval.

13 And they have started with Ms.  
14 Morrison's suggested 150 days and divided it simply  
15 into these 66 days per camp, plus 18 days for those who  
16 don't fit into the experts portion of the hearing, if  
17 you will.

18 But I have not found any rationale in  
19 their submissions, and perhaps we will hear today, for  
20 this split. It seems totally insupportable to us to  
21 allocate time generally or with a fixed pie and cut up  
22 a pie, without regard to the number of parties in a  
23 camp, the number of experts, the complexity of the  
24 issues, the degree to which Hydro has already put a  
25 case forward that assists any particular party, or the

1 degree to which the evidence will assist the Board,  
2 which is ultimately the name of the game.

3 Our camp formally is made up of 64  
4 parties right now. But I think if you speak of the  
5 larger camp, those who will presumably come into that  
6 or align themselves in their presentation with the  
7 anti-supply, if you will, I think this is one of the A  
8 or the B in Mr. Mark's submission, it numbers closer to  
9 90 parties.

10 MEA has provided Schedule a, which is 19,  
11 and we may assume that a few more who would consider  
12 themselves pro-supply and join that or slot themselves  
13 into that category. But yet the proposal we see coming  
14 forward is to split the time available if there is,  
15 indeed, a fixed time available, in essence in half.

16 Now, our proposal that we offer was  
17 constructed based on a squeezing of the time estimates  
18 that were offered to you by each party, including the  
19 parties in the opposing camp, and those time estimates  
20 are presumably a bit dated but they were offered in  
21 response late last year to Miss Morrison's request. I  
22 have compiled these in spreadsheet which I will make  
23 available. And there are copies for my friends here.

24 Now, there may be modest inaccuracies in  
25 this, and I stress that the estimations offered were

1       those of my own. In some cases I have had discussion  
2       with other counsel to try to get a sense of it, but in  
3       others I have just extrapolated from what other parties  
4       have done.

5               This is, just to explain, after the party  
6       column, this is a listing, indication of how many  
7       subparties are captured by if it's coalition, for  
8       example, such as my own, then there are two halves --  
9       I'm sorry, three portions of the balance of the  
10      spreadsheet. The first is what we called schedule A.  
11      Those are those who indicated interest or we invited in  
12      at the meeting that took place last year. So that's  
13      some, I think, 87 groups. And then non-A is those who  
14      weren't invited to the party who, I think, we can for  
15      simplicity call the pro-supply group. And then there  
16      were a few participants who had provided time estimates  
17      which are in that final column.

18             And I would simply indicate that those  
19      opposed to supply have, first of all, about four or  
20      five times as many parties. And our time estimates,  
21      including elders evidence, came to over, at lease these  
22      were the initial time estimates, of over four times  
23      those offered at that time by my friends in favour of  
24      supply.

25             We went through a process of squeezing

1       this informally, where we developed the proposal that's  
2       before you today, which reduced the number of hours  
3       significantly from the, I think it was -- well, I won't  
4       try to do the math, but I think it's obvious there was  
5       a significant reduction. But I would point out in  
6       reducing these numbers, I think we bent over backwards  
7       to favour the supply industry in that split. We didn't  
8       just do it pro rata.

9               I think in the final allocation, if we  
10       look at the hours, the supply groups asked for about  
11       241. And in our proposal, they have some 200.  
12       Whereas, our groups and related groups asked for about  
13       900 and we are proposing to squeeze that down to  
14       roughly half that.

15              So I think we have sort of taken more than  
16       our share of the pain already in the split we propose  
17       and I wouldn't want to see, in anything this Board  
18       does, a move towards a simplistic view that there's  
19       really just two sides and there's no shades of gray and  
20       that there's really just two single interests that can  
21       speak.

22       [11:21 a.m.]

23              So whether we build up to a time estimate  
24       as we have done and then squeeze it or take a  
25       predetermined date that the Board wishes to impose and



1 divide, I think the simple submission is that it must  
2 be done with due regard to the differences in numbers  
3 and complexity and shadings of the various parties.

4 I would speak briefly to the question of  
5 duration, suggest that there are still a number of wild  
6 cards out there that may inform this discussion.

7 First of all, counsel are still knocking  
8 their heads together and trying to figure some fashion  
9 of scoping down issues without, I should add, too much  
10 success, but I think one can imagine, for example, as a  
11 result of motions following close of Hydro's case, the  
12 one that we are aware of already, being the Manitoba  
13 motion, it is conceivable that if those motions are  
14 dealt with quickly - and the Manitoba is a peculiar one  
15 in that it calls for a window for further evidence, and  
16 it is my view that it is unlikely that there would be  
17 much further evidence in that Hydro will have the  
18 opportunity of Panel 10 to perfect its case.

19 But in other cases there may be motions  
20 to strike portions of the undertaking or the  
21 undertaking in its entirety, and to the extent there is  
22 any success on those motions that would reduce the  
23 scale of what would fall.

24 We are also having discussions about if  
25 there is any possibility to have some mediation, and

1 none of this is being brought to you today by way of  
2 invitation, rather just to ensure you that there are a  
3 number of counsel who are vitally concerned about how  
4 long we see the case going and are searching as best we  
5 can for some solution.

6 THE CHAIRMAN: Are you able to expand a  
7 bit on what you mean by mediation?

8 MR. D. POCH: Well, there was a thought,  
9 at least a couple of us were discussing, if one could  
10 bring in a tough-nosed mediator to force parties to  
11 first of all disclose a bit more to one another in an  
12 off-the-record basis and then to try and find some  
13 common ground and to try to sort of in a way that a  
14 pretrial hearing might occur.

15 THE CHAIRMAN: So more like a  
16 facilitator. I don't know the word. But you are not  
17 thinking of resolving issues.

18 MR. D. POCH: No.

19 THE CHAIRMAN: You are more thinking of  
20 resolving process.

21 MR. D. POCH: I wasn't suggesting an  
22 arbitrator, rather a mediator, that's right. Perhaps  
23 someone who would be capable of suggesting to parties  
24 the weaknesses of their case and --

25 THE CHAIRMAN: That is different.

1                   MR. D. POCH: And perhaps who could  
2     obtain instructions, have discussions with the Board to  
3     help the parties understand the scheme of things in the  
4     kind of decision that is shaping up what is going to  
5     matter and what is noise at the edge.

6                   Again, this is very preliminary, and I  
7     just mention it to let you know that we are thinking  
8     about such matters. I couldn't suggest to you that  
9     there is any -- I haven't even tested the waters to see  
10    if there is any kinds of consensus on whether that  
11    would be fruitful.

12                  I can certainly see that there are some  
13    parties, including my own, who have certain issues in  
14    which there is really no possibility for agreeing to  
15    some compromise. There is just going to have to be  
16    agree to disagree, which is maybe helpful too in terms  
17    of focussing things.

18                  Now, turning to the question of the order  
19    of proceeding, Mr. Mark suggests that - this was just  
20    one of our key agendas here - he suggests that some see  
21    it as a disadvantage, although I don't think he puts  
22    forward that position himself, so presumably he doesn't  
23    have any problem going forward. But I think it is fair  
24    to say that clearly a number of parties do view that as  
25    a disadvantage.

1 THE CHAIRMAN: I'm sorry, what do they  
2 view as a disadvantage?

3 MR. D. POCH: Having to go first might be  
4 viewed as a disadvantage, not simply because you  
5 haven't heard the other parties' case, which there may  
6 be mechanisms to alleviate that hardship, but simply  
7 because we are functioning under tight time  
8 constraints, and we recognize that is a real or may be  
9 a real disadvantage.

10 THE CHAIRMAN: You are less exposed to  
11 being accused of being repetitious if you go first.  
12 [Laughter]

13 MR. D. POCH: Absolutely.

14 Well, my comments are these. Certainly  
15 in the ordinary course those who support approvals in a  
16 hearing, which is, after all, about approvals under the  
17 Environmental Assessment Act, must expect to have to  
18 precede those in opposition.

19 Ontario Hydro may no longer be asking for  
20 approval of nuclear plants at this time, but they are  
21 still seeking the Board's comments on an overall plan,  
22 which does include either nuclear or fossil, and they  
23 still offer panels, and I think I am not being  
24 argumentative to say that the panel we just finished on  
25 nuclear was a panel where the witnesses they offered

1        were experts who really were quite supportive of that  
2        option.

3                        So those who support those options, I  
4        think, while they may not like the mix as Hydro has  
5        crystallized it and the method they have arrived at  
6        that mix I think they can have the pleasure of knowing  
7        that they are ad item on a number of the views that  
8        have been put forward with respect to the options.

9                        Indeed, I think one could say that, at  
10       least as best as we can tell, a party such as AECL is  
11       effectively a coproponent with a different-favourite  
12       plan from amongst those that Hydro has tabled. Hydro  
13       still has on the table alternative plans which include  
14       approval for the options which parties in favour of  
15       supply are supporting and which include different  
16       planning methodology, which they support.

17                        Now, Hydro may not be offering it to you  
18       as a preferred option but nor have I seen them withdraw  
19       it.

20                        Perhaps, if we are speaking about scoping  
21       the hearing, Mr. Campbell could at some point consider  
22       formally withdrawing some the options or requests and  
23       that may just scope this hearing down a bit.

24                        I think parties who perhaps don't have  
25       allegiance to one particular technology, parties such



1 as MEA or AMPCO, who are nevertheless asking or  
2 approval one of Hydro's alternative plans with a  
3 different planning approach and a supply bent, whereas,  
4 for the most part, the parties that find themselves in  
5 the camp that I am speaking for today are simply  
6 opposed to approvals.

7 Some of them may favour alternative forms  
8 of supply which don't require approval, but they are  
9 opposed to approvals, and I think for the most part  
10 cannot be said to be content with Hydro's planning  
11 methodology either.

12 As to any prejudice from going first, if  
13 there is a possibility of reply or if the Board imposes  
14 a common filing date for all parties' evidence either  
15 in a category or in the totality, the prejudice is  
16 limited.

17 I should indicate that I cannot speak for  
18 all the groups on this question of a common or  
19 staggered filing date. It is not a matter which I can  
20 say I have instructions from parties on. I can simply  
21 speak for the CEG, and we acknowledge there is some  
22 merit in one or more common dates but would submit that  
23 the dates would have to be later than Mr. Campbell  
24 suggested, given the timing of Hydro's case -- the  
25 conclusion of Hydro's case and given the evolving

1 nature of that case, and, in any event, I think one  
2 could anticipate that parties will feel it necessary to  
3 supplement or update their evidence as time goes on.

4 But I certainly see the merit in parties  
5 having to let each other know where they are headed.

6 Now, on a related point, I guess would I  
7 caution the Board that the CEG, and I believe most  
8 parties are proceeding on the assumption, that there  
9 won't be any big surprises, and when we put forward our  
10 proposals to you today and our comments to you today we  
11 have, perhaps without thinking about it, proceeded on  
12 that basis.

13 But while AECL and AMPCO, for example,  
14 have a rather good idea of where we are going since we  
15 are all funded and had to disclose our witnesses' plans  
16 and justify them in considerable detail early on, we  
17 don't have similar disclosure yet from them.

18 Now, for example, I can think of a  
19 scenario. Hydro has chosen to lead very limited  
20 evidence on high-level nuclear waste disposal, an issue  
21 of concern to my client, and presumably that is because  
22 they aren't looking at this time for approvals in that  
23 area, in nuclear in general, and because they have  
24 recognized that there is a federal environmental  
25 assessment review process, which hopefully will deal

1       with this before there is any need for Hydro to come  
2       forward and ask for a nuclear approval.

3               But I can imagine if I search for  
4       surprises that AECL might indeed want you to approve an  
5       alternative plan and include in that an approval for  
6       supply that includes nuclear, and therefore, they might  
7       elect to lead more significant evidence on the  
8       high-level waste disposal question in support of that  
9       option, and we would not be able to respond to that in  
10      short order. We are dealing with Hydro's case as we  
11      saw it early on and the emphasis hasn't changed in  
12      Hydro's case.

13              So, if AECL's supply proposal is found to  
14      be within the jurisdiction of this Board and to approve  
15      in that it somehow comes within the determination of  
16      what the undertaking is and what the proponent is  
17      asking for in the alternative and the Board agrees to  
18      hear the evidence, we would be likely finding it  
19      necessary to at least ask for funding and perhaps that  
20      might be from, in our view, from AECL, who would we  
21      would argue is in essence donning the Proponent's hat  
22      at that point.

23              But my point really here, other than to  
24      scare my friend from AECL a little, is that one can  
25      imagine there are going to be time considerations if

1 events take those kinds of turns, and I could make up  
2 any other number of scenarios, and I am not suggesting  
3 that that one is necessarily likely to unfold.

4 Another point I would make is that in the  
5 MEA's approach it will be more difficult to police  
6 time, both for the Board and for the parties, because  
7 the presentations will be spread out over many months  
8 and the case to be met will change, resulting in  
9 changes in every party's case in essence to effect a  
10 reply.

11 Topics that arise in the evidence of the  
12 supply-oriented parties will result in the need on the  
13 part of the demand-oriented parties to supplement  
14 evidence and vice versa. However, and I think I  
15 alluded to this earlier, the possibility for a fair  
16 allocation of the time available between those parties,  
17 which must include an allocation covering all panels,  
18 will have gone by. And I apologize, I think I have  
19 made that point earlier.

20 Finally, I think it is worth emphasizing  
21 that MEA has suggested letting some of us proceed  
22 party-by-party - and again I stress we are not saying  
23 everybody has to proceed that way - we will put MEA at  
24 added expense because they feel they need to bring  
25 experts up to assist with cross-examination, and they

1 would have to do so perhaps on a number of occasions.

2 Now, I would simply say this might be a  
3 concern for monied parties, but even with the  
4 considerable funding that the CEG has received we  
5 haven't been in a position to afford to work on that  
6 basis, and smaller intervenors whose primary role is  
7 the giving of evidence rather than cross-examining in  
8 the MEA scenario would face the undue expense of having  
9 to break up their case and appear on numerous  
10 occasions. I think it is really a question there of  
11 who is in a better position to bear that expense, and I  
12 would argue that the answer to that is clear.

13 Those are the submissions I have, Mr.  
14 Chairman.

15 MS. PATTERSON: Mr. Poch, I was wondering  
16 as you were speaking whether you had considered whether  
17 the two proposals or the two camps' propositions could  
18 coexist, that you could present your evidence in the  
19 way that you think is best and that the MEA Coalition  
20 could present its evidence, and others would be  
21 encouraged to join one camp or the other or else would  
22 have to go first. [Laughter].

23 Would that be a possibility?

24 MR. D. POCH: Yes. If I haven't been  
25 clear, I had wanted to offer that as one of the



1 strengths of our approach, that there is no  
2 inconsistency with that approach. I spoke in the words  
3 of not wanting to impose our approach on them, and what  
4 I meant by that was precisely that, that the two  
5 approaches could coexist, that we might hear evidence  
6 divided into six issue areas from 20 groups who happen  
7 to be pro-supply and indeed any other groups who wish  
8 to find it convenient to fold themselves into that  
9 format, and then hear from the bulk of the group who I  
10 represent who will be a hybrid, where there will be  
11 some common panels, there will be some complete sets  
12 from a particular intervenor, some intermingling.

13 We don't have any difficulty at all with  
14 that.

15 THE CHAIRMAN: I think perhaps we might  
16 take a break for 15 minutes and then continue. I will  
17 start with you afterwards, Mr. Greenspoon.

18 MR. GREENSPOON: Thank you.

19 ---Recess at 11:38 a.m.

20 ---On resuming at 11:55 a.m.

21 THE CHAIRMAN: Mr. Greenspoon.

22 MR. GREENSPOON: Mr. Chairman, I don't  
23 propose to speak about the agreement. We have signed  
24 the agreement and I think that speaks for itself, and  
25 on behalf of Northwatch we support the concept and

1       always felt that the hybridization of the two was the  
2       way to go.

3               I think connected with that, not to throw  
4       a monkey wrench in, it may be that parties could cross  
5       over from one format to the other, if they wanted, as  
6       long as their allocation remained the same. If they  
7       used up X number of hours in the issue-by-issue, then  
8       they would have to subtract that from the number of  
9       hours that they used party-by-party.

10              I wanted to raise the issue that I hadn't  
11       expected was going to be raised and was raised by the  
12       native people and that is where the hearings are held.  
13       We signed this agreement with the proviso in it, with  
14       the understanding that we would want part of our case  
15       heard in Northern Ontario.

16              And you will see a clause in the  
17       agreement that says the hearings will be in Toronto  
18       except where the Board orders otherwise and we expected  
19       that it would order otherwise. Since the issue was  
20       raised, I just wanted to state our principle on that.

21              Our case is a vision of supply, albeit a  
22       different form of supply, for Northern Ontario. And  
23       given that this is a planning hearing for the whole  
24       province and given that at least it could fairly be  
25       said that many of the impacts, if not most of the

1 impacts, of Hydro's proposals, approvals and otherwise  
2 are in Northern Ontario, we think it is important for  
3 the hearing to be held partly in Northern Ontario.

4 The name of Amory Lovins was raised by  
5 you, Mr. Chairman, and he is our witness. And given  
6 the amount of money that is being spent on him and his  
7 connection to, or him being the foundation of our  
8 vision for Northern Ontario, along with other  
9 witnesses, we would propose that that part of our case  
10 be presented in the North.

11 I spoke briefly at the break with Ms.  
12 Marlatt and she can speak to this but it would seem to  
13 me we have always proposed a North Channel/Manitoulin  
14 visit and that could easily be coordinated with a  
15 hearing in, for example, Sudbury.

16 My understanding of the terminology of  
17 satellite hearing and site visit arises from the Class  
18 Environmental Assessment on Timber Management where we  
19 are also a party. We presented our evidence at the  
20 class environmental assessment on timber in North Bay  
21 and there were site visits held in North Bay, evidence  
22 was recorded under oath, and cross-examination was  
23 conducted.

24 Site visits were also held where the  
25 parties went into the forest to look at the trees, and

1 I think that would be akin to what happened in Moosonee  
2 and what would happen at the North Channel and  
3 Manitoulin.

4 MS. PATTERSON: But in their site visits,  
5 as I understand it, at timber management, there were no  
6 presentations. They didn't hear from people.

7 MR. GREENSPOON: That's right.

8 MS. PATTERSON: So the categories aren't  
9 quite comparable.

10 MR. GREENSPOON: That's true. That's  
11 true.

12 So, I just put that on the record. And  
13 if the Board wants written submissions, which I didn't  
14 have for today because I didn't expect that issue to  
15 come up, perhaps we can deal with that at another time.

16 THE CHAIRMAN: I think you said that you  
17 would like to present some of your case in Northern  
18 Ontario; is that correct?

19 MR. GREENSPOON: That's right. The  
20 vision of what we see we think we would like the people  
21 of the North to hear that.

22 THE CHAIRMAN: And can you be more  
23 specific about where in Northern Ontario you would want  
24 to have this take place?

25 MR. GREENSPOON: I thought that the most

1 reasonable place would be Sudbury because of its  
2 connection to the site visit on the North Shore and  
3 Manitoulin and because the facilities are there. But  
4 Sudbury or Thunder Bay are just as convenient to  
5 Toronto and we represent fourteen groups from Thunder  
6 Bay through to North Bay.

7 THE CHAIRMAN: Your Thunder Bay groups  
8 would be content with Sudbury and vice versa?

9 MR. GREENSPOON: I think that's correct,  
10 yes.

11 THE CHAIRMAN: I used Mr. Lovins just as  
12 an example because he is a well-known person with a  
13 recognized interest, but I am sure that there will be a  
14 great deal of interest in what Mr. Lovins has to say  
15 amongst all the parties throughout the whole of the  
16 Province of Ontario.

17 MR. GREENSPOON: Yes.

18 THE CHAIRMAN: It's not just really a  
19 northern issue but --

20 MR. GREENSPOON: But he was funded to --

21 THE CHAIRMAN: No, no, I am not  
22 quarreling about that.

23 MR. GREENSPOON: He was funded to provide  
24 a study on a scenario of least cost economic impact and  
25 effect in Northern Ontario. Now, obviously, his



1 knowledge is broad and I agree.

2 THE CHAIRMAN: Okay. Of course this  
3 breaches another issue. Every time I think of them,  
4 Mr. Lovins may come to just do Northern Ontario but  
5 there may be people who want to ask him questions about  
6 other things and once he is a witness he is subject to  
7 that kind of cross-examination.

8 MR. GREENSPOON: Absolutely, yes.  
9 Subject to of course how we are going to pay for that.  
10 [Laughter]

11 THE CHAIRMAN: That's a good question.  
12 Mr. Lovins being here for let's say ten days would be  
13 quite an expensive thing as you probably know better  
14 than I do.

15 MR. GREENSPOON: Yes. Well, we will have  
16 the meter running.

17 I wanted to just put on the record my  
18 feeling, again I didn't expect us to be dealing with  
19 funding. I agree with your observation, Mr. Chairman,  
20 that it would be wise to make as little or take up as  
21 little time on funding as possible. And I had always  
22 imagined an extrapolative formula where if the hearings  
23 continue certainly counsel and case management, could  
24 be argued, that those amounts would be extrapolated by  
25 the amount of time that was needed.

1 Northwatch anticipates up till now that  
2 we will come in far under our allocation and this  
3 raises or gets connected with the issue of timing. It  
4 may not be an appropriate analogy but to some extent my  
5 clients are like the families of the coal miners in  
6 Nova Scotia with respect to the nuclear issue. It has  
7 been up and down for them.

8 First we had a very heavy nuclear plan  
9 and then we had the moratorium and then we had the  
10 update. And now we see in the Panel 10 supplementary  
11 witness statements what we will find out about I guess  
12 more in our cross-examination and direct, but our fear  
13 is certainly that nuclear is certainly very much back  
14 on the table and given your scoping ruling.

15 So as a result of all this up and down  
16 and I think partly by direction from the Board because  
17 I recall a memo from the Board that said basically, be  
18 careful about your studies because we are going to have  
19 a scoping hearing and don't do things that may not be  
20 relevant any more.

21 So, in terms of the timing of filing some  
22 of our reports, we have instructed -- I can think of  
23 one witness in particular, we have told him, well,  
24 maybe you don't have to do your study; well, maybe you  
25 better do it now; and then again going back to him and

1       saying, we are not sure.

2               It doesn't apply to all of our studies  
3       but we have been trying to be economical with our use  
4       of the intervenor funding as to what this Board will  
5       rule to be relevant.

6               For example, a new site for a CANDU 6.  
7       It is my understanding now that that is a possible  
8       approval that may be given by the Board, even though it  
9       is not an approval that is being asked for. So I think  
10      there are two areas that are very confusing to me, and  
11      that is approvals that are being asked for by Ontario  
12      Hydro and the scope of what has been called a soft  
13      approval that may be given by the Board.

14              So for those reasons I agree, and I will  
15      close with this, that the timing is very important and  
16      I will agree with my friend Mr. Campbell that it may be  
17      very useful to take some time off to consolidate our  
18      positions, although I disagree that that is dependent  
19      upon us filing reports because, as I said, some of our  
20      reports will not be ready. Some of our reports perhaps  
21      should not even be called although may be filed; that  
22      is, the witness shouldn't be called but maybe the  
23      report should be filed.

24              Depending on what our positions are at a  
25      sit-around, which was ordered by the panel at the class

1 environmental assessment and was called terms and  
2 conditions, the parties had to put down their terms and  
3 conditions, may be useful in us being able to determine  
4 what evidence we will or will not call.

5 I think those are all the submissions I  
6 need to make.

7 THE CHAIRMAN: Thank you. Thank you, Mr.  
8 Greenspoon.

9 Ms. Kleer, Ms. Marlatt, either of you  
10 ready to submit?

11 MR. KAKEWAY: My name is George Kakeway,  
12 I am Chief of Treaty #3 or I should say Rat Portage  
13 First Nation, representing Treaty #3. Treaty #3  
14 consists of 55,000 squares miles in Northwestern  
15 Ontario. And in terms of your geography, it runs from  
16 Upsala, a little past the Manitoba border, Fort Frances  
17 and south to the American border north to Red Lake,  
18 Ontario. So it covers, as I said, 55,000 square miles.

19 I have got a brief written presentation  
20 and I would like to begin to read that. I feel  
21 somewhat uneasy kind of standing here in front of the  
22 Board and uneasy with all these blue suits and these  
23 people sitting here. I feel uncomfortable and that's  
24 why I prefer to read a written submission.

25 THE CHAIRMAN: All right.

1                   MR. KAKEWAY: Mr. Chairman, Members of  
2           the Board, I am here today to speak to you with regard  
3           to the presentation of Grand Council Treaty #3 in this  
4           hearing. As you are aware from the written submission  
5           filed with the Board on May 4, 1992, we along with the  
6           Nishnawbe-Aski Nation, Teme-Augama Anishnabai, are  
7           proposing to present our case to you, both in Toronto  
8           and in our First Nations territories.

9                   In the interests of putting before you a  
10          comprehensive and cohesive case, we are also proposing  
11          to begin and end with technical panels in Toronto while  
12          the central focus of our case will be heard in our  
13          territories.

14                  We cannot emphasize too strongly the fact  
15          that time and time again resources, energy development  
16          for the benefit of the people of Ontario is done at the  
17          expense of the rights and interests of the Aboriginal  
18          people.

19                  Once again we are faced with Ontario  
20          Hydro proposals to transmit and generate power through  
21          and in our territories. They say the need and purpose  
22          of these actions is for the benefit of the people of  
23          Ontario, but, once again, Ontario Hydro has ignored our  
24          rights and our interest in our territories.

25                  Our treaty and Aboriginal rights are



1       protected under Section 35 of the Constitution Act of  
2       1982. And recent Supreme Court decisions such as Sioui  
3       and the Sparrow have provided some direction as to the  
4       extent of our rights. If our rights were  
5       constitutionally protected in 1982, then they were  
6       certainly constitutionally protected in 1985 when  
7       Ontario Hydro embarked on a process that led down to  
8       the Demand/Supply Plan hearings. Despite our rights,  
9       Ontario Hydro choose to virtually ignore us as they  
10      develop their plans.

11               The Ojibway people of Treaty #3 are  
12      unique and distinct peoples. We have our own language,  
13      our own social system and cultural traditions. In our  
14      own governments in and throughout our territories,  
15      traditional territories, we make decisions based on  
16      full and complete discussions of all the issues and  
17      consequences that might follow from these decisions.

18               We are always concerned with what has  
19      come before us and the continued survival of our people  
20      to the seventh generation, as we often say. We accept  
21      and take seriously our responsibility for our people  
22      and the lands we live in. We do this together as a  
23      people. And I must emphasize special accord that we  
24      hold for our elders who provide us with the guidance to  
25      make decisions as a people. It is our elders who

1 understand our past and give us wisdom for our future.

2 Mr. Chairman, and Members of the Panel,  
3 we believe that it is critical for you to understand us  
4 and our systems, what we have suffered through and why  
5 we have so little to trust in your systems and how we  
6 believe this can be and must change, especially in  
7 recognition and respect of our rights.

8 It is for these reasons that we  
9 respectfully ask you to accept our case outline as have  
10 presented it. We ask the Panel to come to our  
11 territories for hearings where elders can address you  
12 properly in the comfort and spirit of their land, where  
13 our people can attend to participate and demonstrate  
14 their interest and concerns for the past, present and  
15 future of our First Nations, where our political  
16 leadership can assist you to understand our goals and  
17 rights. This cannot be achieved through selected  
18 representatives attending the hearings in Toronto.  
19 Where I stand right now, it is not our Ojibway  
20 territory. This is not where the transmission lines  
21 will run.

22 So, in that respect, we emphasize that if  
23 at all possible that these hearings be held in our,  
24 these satellites hearings be held in our territories.

25 THE CHAIRMAN: What locations are you

1 suggesting?

2 MR. KAKEWAY: Kenora.

3 THE CHAIRMAN: Pardon?

4 MR. KAKEWAY: Kenora.

5 THE CHAIRMAN: Kenora.

6 MR. KAKEWAY: Yes.

7 MS. KLEER: Mr. Chairman, it's actually  
8 close to Kenora it's in Rat Portage.

9 THE CHAIRMAN: All right.

10 Thank you very much, sir.

11 MR. KAPASHESIT: Good afternoon. I am  
12 very glad to be here again to address you. It has been  
13 some time since I have had that opportunity.

14 I would have preferred not to come down  
15 here today and have heard from our counsel that  
16 hearings in the community would in fact unfold and that  
17 people like myself and Chief George Kakeway wouldn't  
18 have to travel to Toronto to address this issue, but  
19 unfortunately this is not the case.

20 My name is Randy Kapashesit. I am the  
21 local coordinator for the Moose River/James Bay  
22 Coalition, I also happen to be a board member, and I am  
23 a Chief of one of the members of the Coalition.

24 I was glad to hear that you are  
25 considering coming North and that Ontario Hydro has no

1 objection in principle to these hearings. I  
2 acknowledge that and I think that's a step in the right  
3 direction for them. I am kind of disturbed to hear  
4 that Ontario for their part does not believe that these  
5 are necessary. And maybe they will clarify that  
6 position later, but I find that terribly disturbing  
7 that the Province of Ontario would not want to see  
8 satellite hearings in our communities.

9               There was some discussion this morning  
10 about the site visit to Moosonee and what some of the  
11 people thought of that and whether in fact that was a  
12 hearing or whether in fact that constituted a formal  
13 hearing. There were words like semi-formal hearing, et  
14 cetera. And the question I think you were going to ask  
15 was how did we see that. And Mr. Poch mentioned that  
16 he would like --

17               THE CHAIRMAN: I would like to explain  
18 that to you. One of the concerns we have heard is  
19 that, first of all, it's difficult to have the hearings  
20 for your position in Toronto; and, secondly, that the  
21 formality and the structure of the hearing is something  
22 that is uncomfortable. And I just wondered what you  
23 felt about the way -- because in Moosonee and Moose  
24 Factory in effect the local community organized the  
25 hearings and presented the whole thing.

1 [12:15 p.m]

2 I think, speaking for myself and I think  
3 for my colleagues, that it was a very useful and  
4 helpful exercise. I think we got a very good idea of  
5 what the concerns were and what the position was. And  
6 I just wondered if that process, if that was a good  
7 process or not a good process or how it could be  
8 improved or what.

9 MR. KAPASHESIT: Well, I'd like to  
10 respond to that. I agree with you that the site visit,  
11 as we defined it, was very good for our community as a  
12 whole. It allowed, as you said, from the youngest to  
13 the oldest to come forward to speak. And that was our  
14 approach, to encourage any and every individual from  
15 whatever perspective they might have to feel  
16 comfortable that they can, in fact, come forward and  
17 express themselves. And they did so overwhelmingly, I  
18 would say.

19 And if we were to do something different  
20 at this point in time, which in my mind and in the mind  
21 of the coalition, the idea of coming north now would  
22 have totally different connotations. You didn't hear  
23 from me, for example. I wasn't even at the microphone  
24 for more than two minutes.

25 You never heard from any elected



1       representative of the coalition. And we never  
2       organized that meeting. We let the community decide  
3       how that would unfold. And the intent of having a site  
4       visit, in our mind, was so that you would see that  
5       there is a wide variety of interest in these issues and  
6       that the impacts that potentially flow from these  
7       projects are going to be felt most directly by the  
8       people in the Moose River Basin.

9               Now, if we are going to do it again, I am  
10       sure that you will see me at a microphone and you will  
11       see every other person who is involved in the coalition  
12       formally as the elected representative spending that  
13       time there and coming forward with their views and  
14       their specific concerns and the evidence that we would  
15       need to bring forward in that context. We haven't had  
16       that opportunity yet.

17              I think it's important to comment upon  
18       you notwithstanding your comments earlier, that this  
19       isn't a site-specific hearing. I think it's important  
20       for you to come north for reasons that have already  
21       been mentioned, at least in the view of the Moose River  
22       Basin coalition. Generally speaking, the potential  
23       impacts are going to be felt by northerners in a  
24       northern environment. And I understand the distinction  
25       as made that this is not a site-specific hearing. I

1 want to reiterate that again.

2 But I think it's very important at this  
3 stage that northerners get a chance to express  
4 themselves in their own environment, from their own  
5 tradition. And in our case, as Cree people, our  
6 tradition is an oral tradition. And that, I think, is  
7 as valid as any other form of expression. And we  
8 should feel that this process is welcoming that. We  
9 should feel that in your eyes as Board members, you see  
10 and acknowledge that, as well.

11 And for you to appreciate that, you have  
12 to come to our communities. You have to hear from  
13 people who are going to give you evidence as they see  
14 the world, not as the law profession sees the world or  
15 as legislation sees the world.

16 The word "comprehensive" has been used  
17 from time to time in this hearing, that we should, in  
18 fact, be as comprehensive as we can be in this  
19 environmental assessment. As we see it, to not have  
20 formal hearings in Moose Factory, and I'm proposing  
21 that as one of the sites, Moose Factory, to not have  
22 those would not fulfil in our mind the idea that this  
23 hearing is, in fact, being comprehensive.

24 There is a trend here, I think, and  
25 there's a history that we all have to confront as we

1 live in this time. And the history in Northern Ontario  
2 is that the resources of the land in our area are seen  
3 basically as an energy colony for the southern  
4 consumption. The history of this province has unfolded  
5 in that way.

6 I think it's important to recognize at  
7 this time that if we are going to continue to adopt  
8 that approach, that the north is just simply a  
9 playground for the southerners and that we don't need  
10 to go and listen to those concerns or we don't need to  
11 take into consideration the views of, for example,  
12 elders, then that would not satisfy, in my mind, the  
13 requirements of this process.

14 And that is why I am pleased to hear that  
15 Ontario Hydro agrees in principle that these hearings  
16 should take place. Because if anybody has spent some  
17 time looking at that, Ontario Hydro knows full well  
18 that they have consulted on their role and their  
19 relationship with Aboriginal people and they did not  
20 come back with overwhelming success in that way. They  
21 are trying to be sensitive to that, and I hope that  
22 this process can, in fact, continue with that and  
23 reverse that trend; that not only is the North a  
24 beautiful place and great in resource, richness, et  
25 cetera., but there are actual people up there with

1 histories and connections to places, land, and water  
2 that are being discussed here in this process. And  
3 that must be accommodated.

4 I don't want to take too much time,  
5 because I don't think this issue requires that much  
6 time. It's straight forward. And the honourable thing  
7 to do is to have those hearings. And I know I speak  
8 for the Moose River Basin people when I say that. And  
9 we look forward to a hearing, a formal hearing in this  
10 factory.

11 THE CHAIRMAN: I understand that you said  
12 that you and some of your colleagues on the board did  
13 not participate when we were there before. But let me  
14 ask you about the format that we had up there. You are  
15 talking about a formal hearing. Was the format a  
16 satisfactory format? Or if not, how would you see the  
17 format?

18 MR. KAPASHESIT: Well, I can only speak  
19 for the community. And as a community, I think that  
20 that process and that format that we had there was as  
21 good as it's going to get. I don't think we are going  
22 to do anything extremely different from that.

23 THE CHAIRMAN: For instance, down here we  
24 are sitting here while everyone is at tables. And  
25 there's a reporter taking down every word that

1       everybody says.

2                   I just wonder what -- whereas up there,  
3       people were taking notes and we filed the notes. There  
4       was no one there to cross-examination. There was no  
5       one there to object if something was said as being  
6       irrelevant or that kind of thing.

7                   MR. KAPASHESIT: Well, if we can  
8       transplant this room in Moose Factory with everyone  
9       here who feels that they have to be there to  
10      cross-examine, to take official record, transcript, all  
11      the people that need to be there for this process to  
12      unfold, welcome.

13                  THE CHAIRMAN: I mean, that's what Mr.  
14      Shepherd was more or less suggesting. Then you think  
15      the witnesses, the people who speak, should be sworn in  
16      and that people should deal with whether remarks are  
17      relevant, or not? Myself, I think that may be  
18      inhibiting to your objectives. I just want to make  
19      sure I understand what you are asking.

20                  MR. KAPASHESIT: That particular issue as  
21      to whether, in fact, we are to swear witnesses in, I  
22      don't think we have that answer yet, and I don't think  
23      I'm prepared to give you an answer today.

24                  THE CHAIRMAN: I would expect that there  
25      may be some problem, some qualifications on that.



1                   MR. KAPASHESIT: The best way to explain  
2                   that is, the people who we are going to bring forward  
3                   to you have something to say, and it is their truth.  
4                   And that's how we would see it. And whether, in fact,  
5                   that is seen as the truth that others see is the issue.

6                   THE CHAIRMAN: What I think I hear you  
7                   saying is that what you would like is pretty well the  
8                   same as what we had before.

9                   MR. KAPASHESIT: Well, I guess all I'm  
10                  saying is that whatever we all agree would constitute a  
11                  legitimate and valid formal hearing in Moose Factory,  
12                  let's do it.

13                 MS. PATTERSON: Now, in your counsel's  
14                 case outline on May 4th, it says, we request that the  
15                 Board consent to hold two evening public meetings in  
16                 Moose Factory at which elders and other community  
17                 members would be free to present evidence to the Board  
18                 in a format and framework of their choice.

19                 It seems to me that that's what we have  
20                 done in Moose Factory but we didn't have transcripts.  
21                 That was basically the only difference. And what you  
22                 are proposing is that you have a hearing like we have  
23                 in the normal course but with different people speaking  
24                 in terms of those who didn't speak when we were there  
25                 before.

1                   MR. KAPASHESIT: I think you are  
2                   accurate. I would prefer that Ms. Kleer deal with  
3                   technical nature of these questions, because that's  
4                   what she is paid for.

5                   MS. KLEER: Thank you, Randy.

6                   I just want to clarify, the public  
7                   meetings that we have proposed here at the end are,  
8                   yes, subject to your approval and then we would propose  
9                   that there be transcripts taken. I think the issue of  
10                  transcripts is actually quite important, because this  
11                  is a record that is going to exist for now, but it will  
12                  continue as well into the future. And I think that  
13                  their evidence is every bit as relevant and as valid  
14                  and ought to be recorded for future reference, just as  
15                  would the evidence of a technical expert, that we call  
16                  a technical western scientific expert. So that's very  
17                  important.

18                 MS. PATTERSON: I guess that we should  
19                 have known that before we made our previous trip.

20                 MS. KLEER: Perhaps I can explain that,  
21                 as well. I had discussions about Ms. Morrison about  
22                 the question of transcripts and it was at that time  
23                 that we decided not to go ahead with transcripts. I  
24                 certainly was under the impression, in my discussions  
25                 with Ms. Morrison that this was not going to be the

1 last time that the Board came to Moose factory.

2 And the issue of transcripts is very  
3 important. One refers to transcripts in evidence, I'm  
4 sorry, in argument. And I think we ought to be able to  
5 do that using the evidence that our clients have given.  
6 That is, legal counsel ought to be able to refer to  
7 that. So I think the issue of transcripts is quite  
8 important.

9 THE CHAIRMAN: I understand you are  
10 proposing a meeting in or a hearing in Moose Factory.  
11 Is there any other place within the coalition that you  
12 are suggesting the hearing be held?

13 MS. KLEER: No, not for the Moose  
14 River/James Bay Coalition. And we want to clarify, as  
15 well, that we are not asking that our technical experts  
16 be heard there. We are content to have them heard in  
17 Toronto. We recognize that there are benefits to that.

18 If I may, just one other point I want to  
19 raise, unless you want me to raise it later. But in  
20 relation to the MEA proposal, I do have some concerns.  
21 If you would like me to address that them now, I would  
22 be happy to do so.

23 THE CHAIRMAN: This is a good time.

24 MS. KLEER: The issues as they have been  
25 split up in the MEA proposal have a first category,

1       being general, and they have slotted what they call  
2       tribal elders, although I would have preferred them to  
3       have said Aboriginal elders under that. That splitting  
4       up of issues and then having the other issues on demand  
5       and supply options heard following that is precisely  
6       the problem that my clients are concerned with.

7               The evidence of elders and of  
8       communities, of community members, relates to those  
9       other issues, relates to the question of impacts of  
10      hydraulic which is later on in the MEA proposal. To  
11      split it up like that creates the impression, quite  
12      honestly, that their evidence is miscellaneous.

13             It is quite relevant to the whole  
14      question of impacts, and I think it has to be heard as  
15      a whole. Splitting up issues like that does not work  
16      for a coherent case that is being put in on behalf of  
17      the Aboriginal intervenors. And that's my main  
18      submission in relation to that.

19             The second subsidiary point is that in  
20      the MEA proposal, they propose that they should lump  
21      together all the renewable options in which they  
22      include hydraulic. Frankly, I think that's  
23      inconsistent with the emphasis that Ontario Hydro is  
24      placing on hydraulic in the requested approvals. Major  
25      hydraulic is quite distinct from wind and solar and

1       ought not to be lumped together if the Board chooses in  
2       the end to take an issue-by-issue approach.

3               THE CHAIRMAN: Thank you.

4               Ms. Marlatt?

5               MS. MARLATT: Thank you, Mr. Chairman. I  
6       would like to begin by addressing the issue of  
7       satellite hearings. And I would draw the Board's  
8       attention to a memo issued from the Environmental  
9       Assessment Board, from Gail Morrison, dated November  
10      22nd, 1991. There are several points outlined in that  
11      memo that deal with the issue of whether or not  
12      satellite hearings outside of Toronto are acceptable.

13              One of the sentences in that memo states  
14      that it may be particularly difficult to ensure that  
15      the interests of all parties are accommodated and that  
16      all relevant experts are able to attend. This is in  
17      reference to hearings outside of Toronto.

18      [12:30 p.m.]

19              And in response to that sentence, I would  
20      like to say that it is our position that certainly the  
21      interests of northern participants are not accommodated  
22      by holding this hearing in Toronto, and, in fact, they  
23      have to worry about getting their lawyers, getting  
24      their experts, getting their community members down  
25      here all the time. So, if we are talking about who is



1       inconvenienced I think up until now we have certainly  
2       seen it to be the northern participants.

3               Secondly, I would like to say that all  
4       relevant experts are not able to attend in Toronto and  
5       because of the expense partially and also because of  
6       the location. In our case, there was no funding given  
7       for community members or elders to come down and sit  
8       through any of this hearing process. So our experts  
9       are not available here in Toronto. That area of our  
10      expertise is not available.

11             The second point I would like to make is  
12      a further sentence in that memo states that: In any  
13      case, the Panel cannot hold lengthy proceedings in any  
14      one community. Well, looking at the case outlines that  
15      you have received from the Aboriginal groups, I  
16      certainly would not consider a few weeks or less than a  
17      few weeks to be lengthy proceedings. I would, on the  
18      other hand, consider that we have had a one-year  
19      anniversary already in this hearing in Toronto. Those  
20      are lengthy proceedings. Two or three weeks in  
21      Northern Ontario is not a lengthy proceeding in my  
22      mind.

23             Further, in that memo a statement is made  
24      that given the number of participants and the support  
25      needed for the hearing, however, choice of locations

1 would be limited in any case to relatively large  
2 communities where arrangements would be similarly  
3 unfamiliar and formal.

4 It would be my submission --

5 MS. PATTERSON: Maybe we can just cut  
6 this off because I think that at the time that that  
7 memo was written it was the submission of people like  
8 Mr. Taylor that we should be having extensive hearings  
9 in Moosonee and Moose Factory, and we are not talking  
10 about the same thing any longer, I think.

11 MS. MARLATT: Well, if that is the  
12 Board's understanding, then that is certainly  
13 acceptable to me, but -- yes?

14 THE CHAIRMAN: Excuse me. Perhaps you  
15 could tell me where your clients would like to have  
16 hearings held. I would like to have some idea of that.

17 MS. MARLATT: Certainly. With regard to  
18 the distinction between site visits and satellite  
19 hearings I would also like to point out that I think  
20 there is a distinction between formal hearings in  
21 Toronto and hearings held outside of Toronto.

22 THE CHAIRMAN: But still formal?

23 MS. MARLATT: Well, I think that the term  
24 "formal" is what catches us up here.

25 Certainly we have seen a change in the

1       proceedings used by courts throughout Canada when  
2       dealing with native participants. For example, in a  
3       Quebec court recently while dealing with some of the  
4       individuals who were charged as a result of the Oka  
5       incident the court decided that the Mohawks present in  
6       a courtroom did not have to rise every time a judge  
7       entered the room, that that was not necessarily an  
8       appropriate part of that formal proceeding; it was  
9       culturally inappropriate.

10               So I think that looking at this hearing  
11       room and saying we are going to lift this up and put it  
12       somewhere in Northern Ontario is not necessarily the  
13       solution.

14               THE CHAIRMAN: I don't disagree with you  
15       about that. You were at Moose Factory, weren't you?

16               MS. MARLATT: No. We were not available  
17       at Moose Factory because of funding problems.

18               THE CHAIRMAN: All right.

19               MS. MARLATT: All right. Now, with  
20       regard to site visits there are no transcripts from  
21       those to date, and that is certainly a problem because  
22       if we bring in elders' evidence there is no reason in  
23       my client's mind why that should be dealt with not as a  
24       formal part of this hearing, and I mean formal in the  
25       sense that it is part of the record of this hearing.

1                   Further, for community and elder evidence  
2           that evidence should be held in an Aboriginal  
3           community. That is the position of our clients on that  
4           matter. It is inappropriate to tell their community  
5           members and elders that they must leave their community  
6           and go elsewhere to present their own evidence.

7                   Now, with regard to other parts of our  
8           evidence such as economic impacts which we have asked  
9           to be held in the North because that is where our  
10          expert is located, we would concur that we can perhaps  
11          work out something with a group such as Northwatch and  
12          deal with an issue perhaps of satellite hearings in  
13          Sudbury. Thunder Bay is a bit of a stretch for my  
14          clients, but certainly Sudbury would be helpful.

15                  Northwatch and the North Shore Tribal  
16          Council have worked together previously in the Timber  
17          Management hearing. I see no reason why we can't try  
18          to do so at the same time here.

19                  What I would suggest to the Board is that  
20          the Board consider giving us a month to go away, talk  
21          with Ontario Hydro, talk with the other parties, all of  
22          the other parties who are interested in this matter,  
23          have some meetings, sit down, work out what we consider  
24          internally to be reasonable both in terms of places for  
25          satellite hearings in the sense of within native

1 communities and satellite hearings outside of native  
2 community, talk with other intervenors about who wants  
3 to call their evidence where.

4 We may not all get exactly what we want,  
5 including time constraints, but on the other hand that  
6 gives us an opportunity to present something to the  
7 Board that we do consider acceptable, and I think  
8 Ontario Hydro is certainly a party to that.

9 THE CHAIRMAN: You are talking not only  
10 on behalf of your own client, but you are visualizing  
11 everybody who wants out-of-Toronto hearings would  
12 participate in that?

13 MS. MARLATT: Yes.

14 THE CHAIRMAN: Is that what you...

15 MS. MARLATT: Well, certainly that might  
16 be something that other parties can address today in  
17 front of you who are interested in satellite hearings.  
18 I am sorry that MRJBC and NAN/Treaty #3 have gone  
19 previous to me, but I am sure that Ms. Kleer will speak  
20 later if that is inconvenient or unacceptable.

21 There is one more point with regards to  
22 making a decision in the public interest. Just to  
23 emphasize the importance of this matter, time and costs  
24 are not the only factors that determine public  
25 acceptability, and I don't think there is any question



1       that this Board has heard from First Nations that  
2       previous proceedings have not been acceptable to First  
3       Nations; they have not felt that they had a voice.

4               If at this proceeding, just in the  
5       proceeding of the hearing, they feel that their voice  
6       has been cut out it is questionable how acceptable any  
7       decision can be if they do not feel that they have  
8       truly been heard by this Board. And to hear them is  
9       not enough to say that they can come down and speak to  
10      you. It is not enough to say that you will go up and  
11      speak to them without making their evidence part of the  
12      written record of this proceeding.

13             It is possible that like the Berger  
14      inquiry you may wish to quote from those people in your  
15      ruling. That is what happened at the Berger inquiry.  
16      They used transcripts for those community meetings, and  
17      those comments from those communities were integrated  
18      into that decision. You would not have the opportunity  
19      to do that if you chose not to make those submissions  
20      part of the formal hearing process. And again, by  
21      formal I am referring to the record.

22             I would like to move on to the area of  
23      issue-by-issue approach.

24             If I recall the original discussions that  
25      we had a year ago about the issue-by-issue approach

1 Ontario Hydro did oppose the issue-by-issue approach  
2 for the Proponent because they said they knew their  
3 case and they knew how best to present it. Well, I  
4 would suggest that intervenors also know their cases,  
5 and they do know how best to present it. That is part  
6 of their job at this hearing, is to provide you with  
7 some indication of how they feel is best to present  
8 their case.

9 As for the Board having a sense of what  
10 the issues are because of cross-examination by  
11 intervenors of Ontario Hydro's witnesses I would say  
12 that is completely inaccurate for intervenors such as  
13 ours because it has in fact been the position of First  
14 Nations that the information Ontario Hydro has brought  
15 forward does not address First Nation concerns. So  
16 that was not addressed as part of the cross-  
17 examination. It is only going to hear from the elders  
18 that you will really understand what those First Nation  
19 concerns are.

20 Furthermore, an issue-by-issue approach  
21 will fragment First Nations' case that they wish to  
22 bring before this Board, at least with respect to my  
23 clients, because what it does is it further allows  
24 their world view, their view of the environment as a  
25 whole, to be fragmented in front of this Board into an

1 issue-by-issue basis. It is my understanding that the  
2 elders will tell you that precisely is not acceptable  
3 to them; that is exactly the opposite of the way in  
4 which they view this environment.

5 Now, this is not to say that we are not  
6 quite content to work with other intervenors, both  
7 Native and non-Native, and wherever possible bring in  
8 joint panels and joint evidence. We have, I don't  
9 think, shown any problem with working together with  
10 intervenors on matters such as that whenever it is  
11 possible.

12 However, just like Ontario Hydro, my  
13 clients have the right to present their evidence to the  
14 Board in a way that is culturally appropriate to them,  
15 and an issue-by-issue basis is not.

16 I believe those are all my submissions.

17 THE CHAIRMAN: Any questions? Thank you,  
18 Ms. Marlatt.

19 Mr. Taylor, I think you fit into this  
20 group?

21 MR. TAYLOR: Thank you, Mr. Chairman.  
22 And yes, indeed I do fit into this group.

23 May I first address the issue of  
24 intervenor-by-intervenor approach and say we support  
25 the position that has been advocated by Mr. Shepherd

1       and Mr. Poch.

2                       Secondly, with regard to the issue of  
3       intervenor funding I must confess that I was not  
4       anticipating speaking to this issue today, and I would  
5       like to reserve the right to speak to that later on,  
6       but I would ask the Board to note - and this is very  
7       trite - but, in fact, there have been dramatic changes  
8       that have occurred since all of us filed our intervenor  
9       funding applications back in 1990, and, in fact, I  
10      would ask the Board when it comes time to take into  
11      account that dramatic change in circumstances.

12                     I would like now to address the issue  
13      that I had anticipated speaking to the Board on, and  
14      that is the issue of satellite hearings.

15                     As the Board is well aware since these  
16      hearings began my client has been strongly advocating  
17      the position that there should be hearings held in  
18      Northern Ontario, and thus I trust it comes as no  
19      surprise whatsoever to the Board that I am here seeking  
20      to have my client's case presented in Moosonee.

21                     I believe that there are very strong  
22      legal and public policy reasons for the Board in fact  
23      to do this, not the least of which are the following.

24                     Firstly, with Exhibit 452 we now are  
25      aware that the development of hydraulic power in the

1       Moose River Basin forms a very substantial portion of  
2       the approvals being sought by Ontario Hydro.

3               Secondly, with the notice of motion that  
4       has been filed by IPPSO and other intervenors the  
5       motion is to deny the approval of the transmission to  
6       incorporate the Manitoba Purchase. Depending on the  
7       Board's ruling on that motion it is entirely possible  
8       that the only approvals that will remain on the table  
9       are those related to hydraulic development.

10              Regardless of that outcome, the Moose  
11       River development is in Northern Ontario and the most  
12       significant impact will be on the peoples of Northern  
13       Ontario, not of Toronto and not of Southern Ontario.  
14       Therefore, I would submit the only logical position is  
15       that the hearings be held in Northern Ontario.

16              The Board will recall from your visit to  
17       Moosonee that in fact Moosonee is a very remote  
18       community. It is very expensive, it is very  
19       time-consuming to attend hearings in Toronto, and that  
20       precludes the attendance of elected representatives,  
21       community leaders and residents to be here. In fact,  
22       it precludes the attendance of the vast majority of the  
23       residents of Moosonee.

24              Now, in the submissions that I have filed  
25       with regard to these comments I have noted for you



1 relevant portions from the Statutory Powers Procedures  
2 Act with regard to Section 9(1) in that "a hearing  
3 shall be open to the public", Section 19 of the  
4 Environmental Assessment Act, again speaking of "open  
5 to the public", and Section 10 of the Interpretation  
6 Act with regard to "fair, large, liberal construction  
7 and interpretation of statute".

8 MS. PATTERSON: I think we have read your  
9 submissions, Mr. Taylor. Can you tell us exactly what  
10 you mean by "satellite hearings in Moosonee"?

11 MR. TAYLOR: With one small point. May I  
12 just finish one thought and then I will come directly  
13 to that?

14 The holding of a hearing in Toronto  
15 effectively is a closed hearing to the people of  
16 Moosonee, and that goes contrary to the spirit and  
17 intent of that.

18 On the way to the hearing this morning I  
19 was musing on the GO train, and I would like to just  
20 share this with you. If you look back to the original  
21 concept with regard to boards, boards were supposed to  
22 be informal, they were supposed to be laypersons'  
23 boards, boards where you didn't have to have a lawyer,  
24 you didn't have to have consultants, where the average  
25 person --

1                   THE CHAIRMAN: I think there are a lot of  
2 people who would be delighted if there were no lawyers  
3 involved in this process. [Laughter].

4                   MR. TAYLOR: Well, I can understand that.  
5 But where the average person could come forward and  
6 state his or her case.

7                   Mr. Chairman, it strikes me that this  
8 hearing may become the ultimate paradox with regard to  
9 that original philosophy if it effectively restricts  
10 the submissions, the lawyers and consultants, and it  
11 stays away from the people in the North who are going  
12 to be most directly affected by it.

13                  So to come back to the question that Ms.  
14 Patterson posed and I have not answered as of yet, the  
15 submission is that we would like to have the  
16 opportunity to present our case in Moosonee, both the  
17 evidence of experts and the opportunity for people to  
18 come forward and provide their concerns to the Board.

19                  Now, I have heard the question in terms  
20 of being in Moosonee and Moose Factory in September,  
21 but, with respect, the world has changed since  
22 September. There have been dramatic changes with the  
23 course of this case, and I think the submissions that  
24 have been made by members on behalf of the Moose  
25 River/James Bay Coalition and the fact that there have

1       been dramatic changes with regard to this hearing  
2       warrant that there should be a hearing or this hearing  
3       should be put forward in Moosonee, and I think that the  
4       format should be both.

5               There should be the opportunity for the  
6       people in Moosonee, and/or Moose Factory for that  
7       matter, to hear the evidence that is going forward of  
8       their experts and also that they have the opportunity,  
9       as we did on that evening in Moosonee and the next  
10      evening in Moose Factory, for the average person to  
11      come forward and state his or her concerns to the  
12      Board.

13             Those are the submissions that I have to  
14      make in that regard, and I would be happy to answer any  
15      questions that you might have.

16             THE CHAIRMAN: So you would be in a sense  
17      different from Ms. Kleer and her clients that you would  
18      want any technical evidence that you intend to present  
19      would be also presented in Moosonee; is that correct?

20             MR. TAYLOR: I don't mean to comment on  
21      Ms. Kleer's case.

22             THE CHAIRMAN: No, no.

23             MR. TAYLOR: If she would like to do  
24      that, that's fine.

25             THE CHAIRMAN: No, but I am just saying

1       you would want to have technical evidence presented,  
2       expert evidence from other than inhabitants of the area  
3       at Moosonee; is that what you are saying?

4               MR. TAYLOR: I would like the local  
5       community to have the opportunity of hearing firsthand  
6       that evidence that is going in on behalf of them.

7               THE CHAIRMAN: All right.

8               MR. TAYLOR: Thank you.

9               THE CHAIRMAN: Thank you, Mr. Taylor.  
10      Mr. Mattson?

11              MR. MATTSON: Thank you, Mr. Chairman. I  
12      will be very brief.

13              In addition to our written submissions I  
14      think Energy Probe is in complete support of the  
15      comments made this morning by Mr. Shepherd and Mr.  
16      Poch; that is, specifically with respect to the  
17      procedures on the issue-by-issue versus the  
18      intervenor-by-intervenor basis.

19              I think that you will find once a  
20      decision has been rendered by yourselves with respect  
21      to timing and how much time is available for the  
22      intervenor's cases Energy Probe will at that time again  
23      sit down with those groups and hopefully be part of a  
24      larger group on the intervenor-by-intervenor basis, and  
25      those are really the extent of my submissions.

1 Thank you.

2 THE CHAIRMAN: I think that Mr. Mark is  
3 next. Would that be right?

4 And I would suggest that rather than  
5 start -- you may be more than 10 minutes; would that be  
6 right, Mr. Mark?

7 MR. MARK: Not a bad estimate, Mr.  
8 Chairman.

9 THE CHAIRMAN: I think rather than start  
10 and stop you we can stop now and come back at 2:30.

11 MR. MARK: Very well.

12 ---Luncheon recess at 12:50 p.m.

13 ---On resuming at 2:35 p.m.

14 THE CHAIRMAN: Please be seated. I  
15 understand Mr. Power is here. Not here? Mr. Power  
16 wanted to start. There he is.

17 And Mr. Mark, is that agreeable with you  
18 if Mr. Power goes ahead?

19 MR. MARK: It is, Mr. Chairman.

20 MR. POWER: Thank you, Mr. Chairman.

21 I believe you have a letter in front of  
22 you dated May 4th which lists the concerns of my  
23 client. In essence and at the time I indicated we  
24 would be reviewing the proposals that were submitted  
25 and providing our support to the proposal that appeared



1 to meet our concerns.

2 I spoke with Ms. Marlatt this morning  
3 about the proposal that Mr. Poch and Mr. Shepherd have  
4 put forth and South Bruce is willing to support that  
5 proposal. I believe it meets our concerns subject to  
6 two caveats. And that's one: the ability to present  
7 our case at one time as we feel that due to economics  
8 or lack thereof of our client, we don't have the  
9 funding to come back several times and the relative  
10 uniqueness of our case we do need to present it at one  
11 time.

12 And secondly, the amount of time to  
13 present the case, which I know is a concern to  
14 everybody here, but subject to being able to work those  
15 issues out with that group, we are quite willing to  
16 work with that group.

17 By way of further comment to you, my  
18 client appears to be in a strange situation in that  
19 some of the pro-supply people view us as anti-supply  
20 while some of the anti-supply people view us as  
21 pro-supply, which I guess leaves us holding the high  
22 and middle ground of reasonableness. And that has  
23 created some problems in discussions with parties but  
24 hopefully we can resolve that over time.

25 On other matters if I may just by way of

1       brief comment, we support the view that not all the  
2       intervenor cases should be cross-examined by every  
3       party. We are certainly strongly of the view that our  
4       cross-examinations will be very limited. We hope,  
5       subject to seeing materials, that we can get away with  
6       four to five hours in total of cross-examination of all  
7       the other parties and we hope other parties can do  
8       likewise.

9               Finally, of particular importance is the  
10      issue of satellite hearings. To be frank, I was not  
11      prepared to come here and speak to that issue today. I  
12      didn't think we would be addressing it to the detail  
13      that we did and I have not got my client's  
14      instructions. However, I would like to make a few  
15      comments but reserve the right to follow up by a  
16      written submission if that's acceptable to you, Mr.  
17      Chairman.

18              THE CHAIRMAN: That's acceptable.

19              MR. POWER: South Bruce represents 11  
20      municipalities, three chambers of commerce and  
21      obviously the people of the region around the Bruce  
22      nuclear plant who support the need for a hearing to be  
23      held in their community and for many of the same  
24      reasons that you have heard from the First Nations and  
25      from the northern groups.

1                   By way of background. If you are not  
2 familiar with the area, in the 1960s the area  
3 surrounding what is now presently the Bruce Nuclear  
4 Power Development Hydro facility was primarily  
5 agrarian. As you can appreciate at the time 5,000 or  
6 so Hydro workers moved in, that created a dramatic  
7 change to the community. Ten years later, several  
8 thousand workers left. This boom and bust cycle has  
9 created a significant socio-economic and environmental  
10 impact on the area and accordingly they feel they are a  
11 representative community with something to contribute  
12 to the hearing which goes beyond simple legal  
13 presentations to the hearing and they feel quite  
14 strongly that they would like to meet with the Board  
15 and make representations to that effect.

16                   I guess there appears to be an issue  
17 between a community meeting versus a formal legal  
18 hearing on these satellite trips. And to be frank I  
19 have not got my client's instructions on that, but my  
20 instincts are they would prefer to have both at the  
21 hearing whereby perhaps in the evening the community  
22 could come out and meet the Board. During the day we  
23 could present our formal expert evidence and the  
24 cross-examination could be completed. However, at the  
25 same time I do appreciate there are some practical

1 problems with moving the whole hearing up to that area.

2 THE CHAIRMAN: Am I hearing you correctly  
3 that the exercise would take one day? That is four or  
4 five hours of testimony and cross-examination, plus a  
5 community meeting in the evening?

6 MR. POWER: No, sir. I wish I could  
7 assure you of that but I think what I was meaning is we  
8 could during the day perhaps do the expert testimony  
9 and then given that many people are at work during the  
10 day perhaps a couple of hours at night, something to  
11 that effect. We have done the equivalent thing in  
12 other hearings.

13 THE CHAIRMAN: I thought you said that -  
14 maybe I missed it - your whole case would take four or  
15 five hours.

16 MR. POWER: No, Mr. Chairman.

17 THE CHAIRMAN: It's a letter, oh, I see.

18 MR. POWER: I certainly hope not to limit  
19 myself like that in my comments.

20 THE CHAIRMAN: 22 hours. It has been  
21 pointed out to me that your letter says 22 hours.

22 MR. POWER: Yes, Mr. Chairman.

23 Anyway, we will have to follow up by way  
24 of written comment on that, but I want to emphasize it  
25 is very important to our client. There are several

1 people awaiting the Board's arrival I might add.

2 THE CHAIRMAN: I don't know whether that  
3 is good or bad. [Laughter] In some places that would  
4 be an incentive to stay away.

5 MR. POWER: I think you will be met with  
6 hospitality.

7 A final comment is you raised the issue  
8 of interim costs, further interim costs. I guess the  
9 time which is presently under review for the present  
10 interim costs application is only up to December of  
11 last year.

12 Assuming we are to have a second interim  
13 costs application perhaps this September, assuming two  
14 to three months to process after that, we are really  
15 looking at another nine-month time frame for a cost  
16 award to assist parties such as my client who do not  
17 have a lot of resources to carry on this long process.  
18 We would certainly appreciate that the next interim  
19 costs application time be sooner rather than later, if  
20 possible.

21 Those are all my comments, Mr. Chairman.

22 THE CHAIRMAN: Thank you, Mr. Power.

23 Mr. Mark.

24 MR. MARK: Thank you, Mr. Chairman.

25 Mr. Chairman, at the outset, let me say



1       because I will forget if I don't do it now that in  
2       addition to the intervenors listed on schedule A to the  
3       proposal we filed, there is now filed a letter by the  
4       Canadian Nuclear Association, that they support that as  
5       well, and I think that has letters on file. I just  
6       wanted to bring it to your attention now at the outset.

7               Mr. Chairman, what I want to do this  
8       afternoon is speak to the highlights or the fundamental  
9       aspects of the issues before you. Mr. Hamer who will  
10      follow me will deal in somewhat more detail with the  
11      specific proposal that has been advanced.

12             Mr. Chairman, I think the appropriate  
13      starting point is to ask the question: What is the  
14      purpose of intervenor evidence? And in my submission  
15      asking that question goes a long way to determining  
16      what the appropriate procedures ought to be. Happily I  
17      don't think it is a particularly controversial  
18      question. I think most intervenors, if not all, would  
19      to some extent share the view that the purpose of  
20      intervenor evidence is to assist the Board in  
21      understanding the issues and evidence before it.

22             It is not for the purpose of permitting,  
23      it is not only for the purpose of permitting the  
24      parties to present such evidence as they want in such  
25      manner as they want.

1                   Fundamental to this, Mr. Chairman, I  
2     think is in my submission the principle that this Board  
3     has the right and should not shy away from exercising  
4     the right to make determinations about what appears to  
5     be in issue, what appear to be central issues, and what  
6     manner of presentation will be of the greatest  
7     assistance to the Board.

8                   In the written submissions I filed back  
9     in March, Mr. Chairman, on the scoping argument that we  
10    had, I included a quote from the Ontario Divisional  
11    Court decision re Innisfill. And if you recollect that  
12    quote, it said quite distinctly, Mr. Chairman, that  
13    this is not a proceeding with a lease between parties.  
14    It is an exercise for the education of the Board and  
15    the Board has the right to determine both what evidence  
16    it will hear and in what manner it should be heard.

17                  The notion that this Board should still,  
18    at this stage of proceedings, should somehow still be  
19    tabula rasa, if you will, that you should stand behind  
20    what I think at this point would be a fiction of saying  
21    we really don't know what evidence will be brought or  
22    what is to be an issue or what the case is all about.  
23    That is a fiction. We have been at this process for  
24    two years now. You have had a year of evidence, you  
25    have had a year of cross-examination. You have had

1        intervenor funding applications. You had opening  
2        statements from the parties. You have got a raft of  
3        literature filed by the parties,

4                    And in my submission, Mr. Chairman, it is  
5        just not realistic to say that this Board at this time  
6        should not have any conceptions which are well founded  
7        and justified about what is in issue, what are the  
8        issues of concern to the Board, and whether there is  
9        some manner of presentation which could best assist the  
10       Board in understanding those.

11                   So to the extent that there is an  
12       argument that says, wait, you don't know what this is  
13       about yet sufficiently to be able to make those  
14       determinations and that therefore the default option or  
15       the cautious option should be simply to let the  
16       intervenors go seriatim or in some similar fashion and  
17       present the evidence in a manner which suits them.  
18       That is not an appropriate submission in my view, Mr.  
19       Chairman.

20                   Mr. Campbell alerted you earlier today,  
21       Mr. Chairman, to some of the remarks made. I think it  
22       is high on two years ago now at one of the early  
23       preliminary hearings. And although the context was  
24       somewhat different in that the issue there was whether  
25       you are going to phase the hearing in terms of decision

1 making, whether we would hear evidence, I think it was,  
2 on certain methodologies and the Board would make some  
3 preliminary determinations which would guide the rest  
4 of the hearing. Although that was the context, I  
5 concur with Mr. Campbell that there are some remarks  
6 there that I think would be of interest. Suffice it to  
7 say without reading them exactly that you were  
8 admonished by Mr. Poch in particular not to fall into  
9 the trap of simply hearing a series of cases one after  
10 the other which in Mr. Poch's own words would prevent  
11 you from coming to the best appreciation of the matters  
12 in issue.

13 The second principle, Mr. Chairman, that  
14 I think the Board ought to bear in mind is the  
15 principle of flexibility. I think if we have all seen  
16 anything over the past year or so, it is that  
17 flexibility really has to be captured in the process or  
18 else we are all at some considerable risk.

19 And we have seen that with the Update. I  
20 think, Mr. Chairman, we have also seen it with some of  
21 the procedural provisions. We must in my submission  
22 construct a system now for intervenor evidence which  
23 permits the incorporation of both new evidence and new  
24 facts and circumstances in the world and new procedural  
25 provisions which can be incorporated and dealt with

1       fairly, so that no party is disadvantaged when those  
2       changes are necessary.

3               And in that respect, Mr. Chairman, I  
4       suggest to you that the issue-by-issue approach which  
5       we put before you best maintains that flexibility. If  
6       we have intervenor-by-intervenor approach, Mr.  
7       Chairman, it seems to me what you are going to have is  
8       this situation: someone or a number of parties will  
9       completely put in their case. We will then have  
10      perhaps something as momentous as the Update, perhaps  
11      less momentous events; for example, an updated load  
12      forecast.

13             But in my submission, Mr. Chairman, the  
14      best way for being able to deal with those is if the  
15      parties are going along in the process on some even  
16      basis, what do we do with those changes if some party  
17      has completely put in his case, has constructed all his  
18      evidence including the evidence of the system planners  
19      and the integration people, and those circumstances  
20      changed. There is no easy way to deal with that.

21             But if the parties go through this on  
22      some issue-by-issue fashion, where they are all in a  
23      position, the same position, to incorporate that  
24      evidence into their future evidence in a similar  
25      fashion, I suggest to you, Mr. Chairman, that's the



1       only realistic way of dealing with that problem.

2               The same thing with procedural  
3       guidelines, Mr. Chairman. Take for example the  
4       question of time limitations which is on all of our  
5       minds. I suggest to you, Mr. Chairman, the worst  
6       position for all of us to be in, is to find partway  
7       through the intervenor evidence that some more strict  
8       or some more liberal time limitations are necessary.  
9       It leaves the parties who have completed all of their  
10      cases thus far in a very difficult position.

11             On the other hand, if we proceed  
12      issue-by-issue it is a level playing field for all the  
13      parties.

14             The next principle, Mr. Chairman, I  
15      submit is adoption of a process which will best  
16      minimize duplication and repetition. There is  
17      obviously no perfect system. I do not go so far as to  
18      say that there are not some advantages in some respects  
19      to the intervenor-by-intervenor approach.

20             But, in my submission, Mr. Chairman, when  
21      compared, there is a much greater potential for the  
22      minimization of duplication and repetition in an  
23      issue-by-issue approach.

24             For this reason primarily, Mr. Chairman,  
25      it forces the parties to the table on like issues at

1       the same time. Being realists, if I have to deal with  
2       let us say demand management in September and another  
3       intervenor doesn't have to deal with demand management  
4       until February, the chances that we are going to be in  
5       a position to coordinate and see where there is  
6       opportunity for corporation or have the incentive to do  
7       that is really quite minimal.

8               The only fair way in my submission for  
9       the Board to be able to maintain some control over the  
10      time limits is to make sure that all parties are under  
11      similar time constraints on similar issues. And when  
12      you put the people up on similar issues at the same  
13      time, you maintain those features. It will force  
14      people inevitably to enter into cooperative efforts or  
15      to forsake their own witnesses when they are satisfied  
16      that somebody else is covering the territory.

17             If we have some number of months  
18      intervening between one intervenor and another  
19      intervenor perhaps even of like interests comes later,  
20      there is, I suggest, going to be an almost irresistible  
21      temptation for that intervenor, especially if he has  
22      the view, as has been expressed here by some that they  
23      have integrated cases which can't be segregated out  
24      into nice packages, although I don't accept that, there  
25      is going to be an irresistible movement to call the

1 demand management witness that that person has as part  
2 of his whole case at that time.

3 The last principle, Mr. Chairman, is  
4 broadly described, I think, as one of fairness. I have  
5 dealt with it in a sense in terms of making sure that  
6 procedural changes and the opportunity to respond to  
7 changes in the factual environment are afforded equally  
8 to all the parties. But here I want to deal, Mr.  
9 Chairman, squarely with the issue of the order of  
10 presentation of evidence. It's been a thread running  
11 through this and I think it is sufficient to say, Mr.  
12 Chairman, that there is a very strong perception  
13 amongst many intervenors that there is a great  
14 prejudice in going in one position or great advantage,  
15 if you will, in going in one position at one end of the  
16 line as opposed to the other end of the line.

17 THE CHAIRMAN: Different people seem to  
18 have different views about that.

19 MR. MARK: Well, I'm not sure what you  
20 mean. If you are saying some people say it doesn't  
21 matter, I don't think there are a lot of those people.

22 THE CHAIRMAN: Some people think it is an  
23 advantage to go first and other people think it's an  
24 advantage to go last.

25 [2:55 p.m.]

1                   MR. MARK: Well, I certainly don't think  
2           it's any secret that amongst the 65 signatories to the  
3           other proposal they see the great advantage in being  
4           last. It is a condition of their agreement that they  
5           go last. So there seems to be unanimity over there.

6                   THE CHAIRMAN: Yes, I recognize that.

7                   MR. MARK: And whether there's a  
8           difference of opinion, or not, Mr. Chairman, frankly,  
9           there is a large risk of prejudice. There is certainly  
10          a certainty that parties are going to perceive that  
11          they are disadvantaged. That's number one.

12                   Number two, ordering intervenor-  
13          by-intervenor and using some logical system which  
14          presumably is those in support and those opposed,  
15          presumes necessarily that you can define the parties  
16          positions relative to that of the proponent.

17                   Now, I will deal with this in more detail  
18          later, Mr. Chairman. For present purpose and just for  
19          putting the principle on the record, I submit it must  
20          be abundantly clear by now, if it wasn't before the  
21          Update, it must be clear since the Update that no fair  
22          categorization in those terms could possibly be made,  
23          as distinct, Mr. Chairman, from categorizations on  
24          certain of the issues which we have in the hearing.

25                   And that's largely what you have done as

1 we proceeded with cross-examinations. And using that  
2 approach, it accomplishes two objectives. A, it allows  
3 you to focus on particular issues where it's easier to  
4 say who is for it and who is against it. It also  
5 eliminates, in my submission, the prejudice factor,  
6 because nobody is going to have to put in all of their  
7 case at one time.

8 For example, I suspect there are some  
9 intervenors, probably even myself, although I don't  
10 want to commit to this but I would give serious  
11 consideration if you said, well, you go first on each  
12 of the panels. I'm much more content with that,  
13 because you are keeping putting aspects of your case  
14 before the Board as time progresses.

15 The last principle, Mr. Chairman, is, in  
16 my submission, the issue I will label logistical  
17 feasibility. And there are two aspects to this. One  
18 is the question of which method is best for the Board.  
19 And as I have indicated before, in my submission that  
20 is something that you are entitled to deal with and you  
21 must deal with, because that is what the process is all  
22 about. It is unacceptable, in my submission, for you  
23 to accept the arguments advanced by some, that you just  
24 can't do that.

25 The second matter here, Mr. Chairman, is



1        simply the mechanics of the system and the logistical  
2        feasibility amongst the parties. I'm not going to  
3        repeat all the detailed submissions I have made in the  
4        written memoranda which you have, Mr. Chairman, and I  
5        urge the board members to review both memos before  
6        deciding this issue. I don't want to take up your time  
7        again on it.

8                        But suffice it to say for present  
9        purposes, Mr. Chairman, that it seems to me as a matter  
10       of logic that the more times you revisit the issues  
11       over an extended period of time, the greater the waste  
12       of resources that you are going to have. And, Mr.  
13       Chairman, the more downtime you are going to have, in  
14       my submission.

15                      Because if we are going intervenor-  
16       by-intervenor, it becomes much more difficult to  
17       accommodate the scheduling problems of expert  
18       witnesses. And we are going to have them. It's clear  
19       we are going to have them. If you have an  
20       issue-by-issue approach, it's much easier and much  
21       fairer to the parties to be able to fit in, for  
22       example, load forecast witness of one intervenor could  
23       conveniently testify really at any point in the panel.  
24       But is it so easy to have a witness on behalf of a  
25       party come and testify during the case of another

1        intervenor? Clearly, it is not.

2                Let me turn now, Mr. Chairman, to the  
3        broad outlines of the proposal which we have put before  
4        you. As I indicated before, Mr. Hamer will deal with  
5        the details and the mechanics. Let me simply say that  
6        there is really one essential ingredient of the  
7        proposal, and that is the issue-by-issue approach.

8                The other aspects of the proposal we have  
9        put before you are not essential. At this point we  
10       suggest they are appropriate. But the beauty, if I may  
11       call it that, of the proposal is that it does not  
12       depend, for example, on either the willingness of the  
13       parties on the ability of the Board to categorize them  
14       in terms of where they stand on particular issues.  
15       Ideally, and the way we have got it crafted at this  
16       point, there would be some main groups who would work  
17       together. But failing that, as long as we are going  
18       issue-by-issue, the Board can, as we have with  
19       cross-examinations to date, simply set an order in the  
20       absence of agreement amongst the parties.

21               So the groupings are not an essential  
22       ingredient. I think it's fair to predict that they  
23       will develop. We have a number of parties on the one  
24       hand, it is said to be 65, who have shown an apparent  
25       ability to cooperate on sharing of witnesses and

1 leaving some issues to others, have no reason to  
2 believe they will not be able that on an issue-by-issue  
3 approach. We will have a same effect, I believe, on  
4 the other side of the fence.

5 The second aspect of the proposal which I  
6 think will inevitably result and is recommend, but  
7 again is not essential, is the time allocations. It is  
8 not a necessary ingredient of the proposal. If you  
9 will, the matrix format that we have presented permits  
10 the Board the latitude to extend or abridge or  
11 reallocate time, both as between, as amongst the issues  
12 and as amongst the intervenors.

13 Indeed, any limit at all is not an  
14 essential ingredient. And if I may just interject at  
15 this point, Mr. Chairman, we used 150 days in specific  
16 response to the request by Ms. Morrison to endeavour to  
17 do that. I should say, speaking personally, after  
18 consulting some others, if there is going to be a  
19 philosophy of relatively unconstrained cross-  
20 examination subject to clear cases of repetition, I am  
21 not optimistic that 150 days is achievable. I think it  
22 has to be somewhat more than that.

23 THE CHAIRMAN: Well, does the extent of  
24 cross-examination impinge on your first point, which is  
25 what the purpose of an intervention in that that is not

1 an adversarial hearing. It's very clear that everybody  
2 is entitled to question the proponent. But not  
3 everybody is entitled to question everybody that  
4 appears as intervenor.

5 MR. MARK: I quite agree, Mr. Chairman.

6 And I think there is some considerable merit to a  
7 proposal which would move us more towards concentration  
8 on written evidence and, indeed, even written reply and  
9 then giving some consideration to what cross-  
10 examination maybe appropriate or necessary. And again,  
11 this is not speaking on behalf of the proponents of the  
12 proposal that I have put forward. But speaking for  
13 myself, Mr. Chairman, I am inclined to the view that  
14 there is far too much emphasis placed on cross-  
15 examination to date.

16 I think 150 days is workable if we are  
17 going to adopt a system which relies principally on the  
18 written evidence with some right of written evidentiary  
19 reply with then, but selected, cross-examination. If  
20 we are not going to do that, Mr. Chairman, I think  
21 something more than 150 days, whether it is 20 days or  
22 40 days is something to be discussed. I don't think  
23 it's an extra 100 days.

24 Now, Mr. Chairman, let me turn now, if I  
25 might, to the proposal put forward principally by Mr.

1 Shepherd and Mr. Poch this morning. The principle  
2 observation I would make, Mr. Chairman, is we do not  
3 have, it seems to me at this point, on the one hand an  
4 issue-by-issue proposal and on the other hand an  
5 intervenor-by-intervenor proposal.

6 I don't view the proposal put forward by  
7 those gentlemen this morning as being an  
8 intervenor-by-intervenor approach at all. What it is,  
9 Mr. Chairman, is this: They say here are 65  
10 intervenors, and we want you to allow us to do what we  
11 will with the evidence. It may be issue-by-issue in  
12 some respects. It may be intervenor-by-intervenor in  
13 other respects. Mr. Poch said this morning, he called  
14 it a hybrid.

15 But I think that's an important point,  
16 Mr. Chairman. It is not a proposal that the intervenor  
17 cases would follow one upon the other. It is a  
18 proposal which, in essence, is simply this. The only  
19 hallmark of the proposal, the only essential feature of  
20 it is that all those 65 intervenors want the MEA,  
21 AMPCO, and AECL to go before them.

22 Take that out of the proposal and what do  
23 you have, Mr. Chairman? All you have is 65 parties who  
24 say, we will put in our case as we want, a little bit  
25 issue-by-issue, a little bit intervenor-by-intervenor.



1 No rules. That's the only feature of the case that  
2 they put forward. There is only one aspect of benefit  
3 to the Board. There is only one aspect which is even  
4 in the nature of a rule or a procedural guideline.  
5 What is that? That's the offer to limit the time they  
6 devote to their case.

7 They say to you, Mr. Chairman, if you  
8 give us this order, if you let us go after these other  
9 intervenors, we will agree to limit our case to 300  
10 hours. Well, Mr. Chairman, you don't need their  
11 agreement to do that. You can impose the time limits.  
12 You have the power to do that. We urge you to do that.  
13 I think everybody recognizes that's going to happen.  
14 And that's the only thing they offer in this proposal.

15 Take that away, which you can impose on  
16 your own, and you simply have 65 parties who say, once  
17 everybody else is finished, we will start. And here's  
18 what you are going to get. Maybe you will get a couple  
19 or joint panels on some issues that will go  
20 issue-by-issue. Then you will get a few months of  
21 intervenor-by-intervenor. Maybe at some point they  
22 will stop and they will put up some more issue-by-issue  
23 panels. It's a free-for-all.

24 We must do it one way or the other. If  
25 there's a logic to do intervenor-by-intervenor, do it

1        intervenor-by-intervenor. Otherwise, do it  
2        issue-by-issue. What's the point, Mr. Chairman, of  
3        these 65 people saying they can cooperate and they can  
4        put up some joint or common witness on a particular  
5        issue and not having that heard at the same time as the  
6        other intervenors put up their witnesses on that issue?  
7        Why should those be separated by some number of months?

8                    And when you strip away everything else  
9        from the proposal, that desire to go first is the only,  
10       is the only element in it which is dependent upon their  
11       agreement.

12                   What is interesting, Mr. Chairman, is that  
13       they make that order of proceeding a condition of the  
14       contract. I don't understand why these parties haven't  
15       come before the Board and said, we can cooperate in the  
16       presentation of a case. We can limit ourselves to 300  
17       hours, and we can do that whether we go first or we go  
18       last.

19                   Why is it a condition of their proposal  
20       that they go last? Now, Ms. Patterson asked Mr. Poch  
21       some questions this morning about what happens to your  
22       agreement if this happens or that happens? The  
23       question that hasn't been asked to them, Mr. Chairman,  
24       and I suggest be asked to them is what happens to their  
25       contractual agreement if this Board orders that they go

1 first?

2 Now, let's just put everybody to the test  
3 here and stop carping around the edges. Is there an  
4 agreement, is their agreement dependent upon everybody  
5 else going first or is it not? And if it's not  
6 dependent upon everybody else going first, if they say  
7 it doesn't matter, then I suggest, Mr. Chairman, that  
8 as the proponents of this idea, that they should go  
9 first.

10 [3:10 p.m.]

11 If it does matter to them, I suggest it  
12 is abundantly clear what the purpose of the exercise  
13 they have gone through is, and I would welcome you to  
14 address that question to them, Mr. Chairman, before we  
15 are done here today. I think the Board is entitled to  
16 know whether you have 65 parties in agreement if you  
17 should decide that that is not the appropriate order  
18 for the cases to proceed.

19 Mr. Chairman, in essence the proposal is  
20 one, and I submit to you, Mr. Chairman, it is in  
21 essence one that says we offer you the carrot of  
22 cooperation if you let us go last.

23 Now, two rationales, Mr. Chairman, as I  
24 understand Mr. Poch's submission, are offered for this  
25 notion that the MEA and AMPCO and AECL should go first.

1 Mr. Poch, I think, stated quite clearly this morning,  
2 Mr. Chairman, that although there was no rationale in  
3 the material filed with the Board as to that order, Mr.  
4 Poch did tell us this morning that he considers the  
5 order justified on some rational basis.

6 The first observation I would make, Mr.  
7 Chairman, is that it seems certainly that not all of  
8 the members of that Coalition agree with that position.

9 I made some submissions to you earlier  
10 that it is impossible to categorize the parties on a  
11 pro or anti position at this point in the hearing.

12 Now, you have on file a letter dated  
13 April 29th, 1992 from one of the signatories to the  
14 agreement from Mr. Campbell at Beard, Winter on behalf  
15 of the Public Health Coalition.

16 Now, the letter from Mr. Campbell says at  
17 the top of page 2:

18 The order of presentation contemplated  
19 in Rule 47 is not particularly applicable  
20 to the present hearings. The parties  
21 cannot neatly be aligned into groups  
22 opposing or supporting Hydro's position.

23 I suggest to you, Mr. Chairman, that that  
24 is the case, and to the extent Mr. Poch, presumably on  
25 behalf of...I'm not sure who, but obviously not on

1       behalf of all of the signatories to the agreement, to  
2       the extent he suggests otherwise is not correct.

3               The first rationale he puts forward is  
4       that, as I understand it, you can say that some people  
5       are in support of the proposal. He says that you can  
6       categorize the parties.

7               THE CHAIRMAN: I think a fairer way  
8       perhaps, as I understood it from what Mr. Poch was  
9       saying was, yes, sure, there are degrees and grey areas  
10      and so on, but, generally speaking, his group is  
11      against additional supply options from Ontario Hydro  
12      and your group tends to either be neutral or in support  
13      of it, and that therefore in the context of this  
14      hearing there is some logic to hearing the supply-plus  
15      group first and the supply-minus group second, if I can  
16      put it that way, rather than the pro or con.

17              MR. MARK: There are two answers to that,  
18      Mr. Chairman.

19              No. 1, the suggestion that the pro-supply  
20      group should go first is founded upon the notion  
21      reflected in the Board's rules that they are more in  
22      support of the Proponent's case. There is no  
23      justification for the conclusion that those --

24              THE CHAIRMAN: No. Perhaps I left out  
25      another aspect. Pro-supply and sceptical of the new



1       452 forecast of need, I guess would be the way to put  
2       it.

3               MR. MARK: Well, then we should be last,  
4       Mr. Chairman.

5               That is what I don't understand. I don't  
6       understand how they take the position frankly that you  
7       had a plan which had a certain forecast of need and had  
8       a large amount of supply.

9               Hydro comes and they take the supply out,  
10      and their Plan is now without that supply.

11              Now, we were pro-supply before the Update  
12      and we were in favour of the Plan. Now the supply is  
13      out; we are pro supply; and we are still in favour of  
14      the Plan. Mr. Poch -- if Ontario Hydro said we are  
15      turning out the lights tomorrow he would have my  
16      clients in favour of the Plan. [Laughter]

17              MR. D. POCH: If my friend concedes that  
18      there is no supply anymore we can all go home.

19              MR. MARK: Mr. Chairman, I mean, he had  
20      in his December memorandum to this Board, he said those  
21      who should go first are pro Hydro, were his words, in  
22      the memo. Well, if it isn't clear by now certainly it  
23      ought to be --

24              THE CHAIRMAN: Well, it has been about  
25      six months since we have heard reference to you as a

1 member of the Hydro family, so... [Laughter]

2 MR. MARK: That is exactly right, Mr.  
3 Chairman.

4 So Mr. Poch and his colleagues for  
5 several months had this convenient rubric: We are pro  
6 Hydro; therefore, we support. So now he is faced with  
7 a situation: Golly, gosh, they ain't pro Hydro any  
8 more.

9 AECL is not here all of a sudden after  
10 January 15th, Mr. Chairman, because it thinks Hydro  
11 needs a little more help with its case.

12 So let's be realistic here.

13 So he creates this interesting little  
14 label. He says, well, now we will say they are  
15 pro-supply. I simply say to you, Mr. Chairman, so  
16 what? Pro-supply, if anything, is the opponent of  
17 Hydro's Plan at this point.

18 So, Mr. Poch's next argument, his next  
19 argument is, well, he says, we support the alternatives  
20 to the undertaking. And that still makes us in  
21 support.

22 Well, we have been listening to Mr. Poch  
23 and several others for the better part of two years  
24 telling us that there are some other alternatives to  
25 the Plan. One is the nul alternative; one is the all

1 demand management alternative. Those are equal  
2 alternatives with Case 15 and all the others. Mr. Poch  
3 supports those. He is as much a supporter of the  
4 alternatives as we are.

5 So how far does that analysis take us?  
6 To say that AECL is a supporter of Hydro because they  
7 support Case 15 but Mr. Poch is not because he supports  
8 the all demand management alternative; that is no way  
9 to analyze the problem, Mr. Chairman. It just doesn't  
10 get us anywhere.

11 We can look at the fallacy of this  
12 argument, Mr. Chairman, by going back to the proposal  
13 that they have submitted. They say that it is founded  
14 upon the categorization of these groups, the pros and  
15 the antis. Well, let's look at one example to see how  
16 that is a complete fallacy.

17 On my side of the fence is Mr. Anshan's  
18 client, the Canadian Association of Energy Service  
19 Companies, one of the most pro demand management groups  
20 in this hearing. On the anti-supply side of the fence  
21 is the Independent Power Producers Society who would  
22 have you authorize a considerably larger amount of  
23 supply in Ontario to be provided albeit by their  
24 client.

25 Now, surely these categorization can't

1 work.

2 Now, is their proposal mechanically  
3 founded upon some presumption about the positions of  
4 the parties? Clearly not. It is a contract, or it is  
5 a club; I am not sure which it is. But they say people  
6 can opt out, and if you opt out of the contract you are  
7 in the first group, you are in the pro-supply group.

8 Well, there is no limitation on the right  
9 to opt out.

10 Energy Probe isn't in. Where does that  
11 put us? Does that put them in the pro-supply group?  
12 Under their rationale it clearly does.

13 Now, what happens if the Coalition and  
14 IPPSO have a spat a couple of months from now and one  
15 of them bows out? Are they now in the pro-supply  
16 group?

17 Either it is based upon this Board's  
18 categorization of the parties, in which case it is not  
19 a matter which is susceptible to contractual voluntary  
20 agreement by the parties to define the club or it is  
21 not. You can't have it both ways.

22 If they say the time allocation is based  
23 upon...you know, so that the pro side has a fair shot  
24 and the anti side has a fair shot, if Energy Probe  
25 doesn't go in the group and a couple of others opt out

1 of the group, am I sharing my time with them?

2 The proposal just doesn't stand up to  
3 analysis when you put it up to the screen that they say  
4 they have used, which is pro and anti. It is simply a  
5 voluntary club established by them. And there is only  
6 one criterion. If you want to follow the MEA and AECL  
7 and AMPCO, you join. That is the only common thread  
8 that it has.

9 The second rationale for the approach put  
10 forward, Mr. Chairman, is that issue-by-issue approach  
11 doesn't accommodate some world views that some of the  
12 parties have.

13 Mr. Chairman, that may well be right, but  
14 we have a choice here. We have got an unmanageable  
15 beast. You can either impose some type of order on it,  
16 which gives fair opportunities with those with other  
17 world views to present their cases, or we can simply  
18 abandon the hope and go in a hodgepodge fashion. And I  
19 suggest the former is by far the preferable  
20 alternative.

21 But you must ask yourself, Mr. Chairman,  
22 how serious a problem is this? As I said before, we  
23 have been here for a long time. We know where the  
24 parties stand. People keep coming before you and  
25 saying, wait, there is another world view coming. Mr.



1 Chairman, no new paradigm is going to fall from heaven  
2 on this case. It is not. We all know that there are  
3 some views, the Aboriginal elders' and some others',  
4 which perhaps cannot be categorized. Nobody is  
5 suggesting that they not be given the opportunity to  
6 present those views in a way which is culturally  
7 appropriate and acceptable to them.

8 Ms. Kleer, who is not here now, stood  
9 before you this morning and said the problem for her  
10 with the MEA proposal is that we have the Aboriginal  
11 elders testifying at the outset separately from  
12 everybody else. Well, maybe she hasn't read the  
13 agreement that she signed because Mr. Shepherd's  
14 proposal has the exact same provision: 20 days at the  
15 beginning for Aboriginal elders to testify.

16 Mr. Chairman, I just can't accept that  
17 after this much time you are not in a position to make  
18 a determination that there is not a host of world views  
19 which are going to come forward which at the end of the  
20 day are going to make some issue categorization  
21 inappropriate. It is just not going to happen.

22 Mr. Chairman, lastly, the hallmark of one  
23 of the advantages advocated for the IPPSO and CEG  
24 approach is that they will cooperate. And they have  
25 been cooperating, and this whole process up until now

1       has led to the point where they are naturally  
2       cooperating.

3               So I say to you, Mr. Chairman, that  
4       suggests that they will well be able to cooperate on an  
5       issue-by-issue approach.

6               What is perhaps...offensive is too strong  
7       a word, but what strikes me as being the real giveaway  
8       to their proposal, Mr. Chairman, is the suggestion that  
9       that cooperation is being offered as a condition of the  
10      Board's acceptance of other terms.

11              I suggest to you, Mr. Chairman, if you do  
12      what our proposal suggests, you say we are going to  
13      have issue-by-issue and we are going to have time  
14      limits, you will get the exact same level of  
15      cooperation from them as you would otherwise, and they  
16      are simply holding that out as something which they say  
17      they are going to give you which they wouldn't  
18      otherwise. And if that is true you shouldn't pay any  
19      heed to it.

20              Mr. Chairman, let me just in closing  
21      respond to a few other points which were raised in  
22      various submissions and in your remarks this morning.

23              Firstly, Mr. Chairman, there is the  
24      question of the time limits. Mr. Shepherd says to you  
25      in the agreement, in the draft order, that he offers

1 time limits which are reasonable keeping in mind the  
2 objectives of the Board.

3 The bulk of the time, bang on half the  
4 time that they propose is to be taken up with  
5 cross-examination, and that is the one aspect of the  
6 draft order they put before you where it is not a time  
7 limit. They do not ask you to impose, nor do they  
8 agree amongst themselves that 600 hours is a limit.

9 They expressly say in their order that is  
10 an objective, we will bear it in mind, but we do not  
11 covenant to restrict ourselves to 600 hours. And that  
12 is the lion's share. They are already at 240 days, Mr.  
13 Chairman.

14 I suggest to you they are offering you in  
15 the end analysis very little in terms of this Board's  
16 meeting its objectives in terms of time. They are  
17 starting at 240 and they are moving upwards.

18 Under the issue-by-issue proposal, as we  
19 have submitted, Mr. Chairman, you retain the  
20 flexibility throughout to expand time on issues where  
21 it is warranted, to take away time on others, and we  
22 have a system, as Mr. Hamer will explain, where the  
23 parties have a clear mechanical way of sharing time  
24 amongst them, and you can change those time limits as  
25 we go because all parties will be on an equal footing.

1                   On the subject of satellite hearings, Mr.  
2           Chairman, I take no position on that and leave the  
3           submissions to the parties who are more directly  
4           interested in that issue.

5                   On the question of the filing of evidence  
6           and intervenor funding, under my initial memorandum  
7           which I filed with you last year, Mr. Chairman, I  
8           proposed that the prefiled testimony occur on a rolling  
9           basis much as it had here. We are not going to have a  
10          great number of issue panels, but testimony would be  
11          filed some number of weeks or days prior to that panel  
12          testifying, and that would obviate the need for a  
13          lengthy adjournment of the hearing to permit parties to  
14          develop all of their prefiled evidence and file it at  
15          one time.

16                   On the other hand, you could still have a  
17          global prefiling and then proceed issue-by-issue. If  
18          that is your preference, Mr. Chairman, I want to speak  
19          to the question of the timing of that.

20                   It clearly has to be in the fall. In my  
21          respectful submission, September is too early.

22                   We are just now starting Hydro's  
23          principal witness panel. Certainly for my  
24          intervention, Mr. Chairman, this panel is of the  
25          greatest significance. I can't finalize frankly all

1       our positions let alone develop testimony until this  
2       panel is finished.

3               The Update, as you have heard me say many  
4       times before, Mr. Chairman, and I won't elaborate  
5       again, is from our perspective a document which brings  
6       remarkable changes to all of the issues we have to deal  
7       with.

8               Lastly, Mr. Chairman, there is the  
9       question of intervenor funding.

10              I am somewhat puzzled by Mr. Shepherd's  
11       proposal that we file evidence in September and we deal  
12       with supplementary intervenor funding after that. That  
13       strikes me as being somewhat of the cart before the  
14       horse. I don't need additional intervenor funding if  
15       we are to apply for it. The parties who are going to  
16       apply for supplementary intervenor funding, leaving  
17       aside counsel - Mr. Shepherd's proposal clearly  
18       contemplates non-counsel fee applications - I can't  
19       finalize my testimony if I don't know whether I am  
20       getting supplementary intervenor funding.

21              THE CHAIRMAN: Well, I think this started  
22       with, I think, Mr. Campbell's submission. I may not  
23       have it all correctly in my mind, but Mr. Campbell  
24       suggested there already had been some work funded and  
25       that that work ought to be presented if it was going to



1 be presented as evidence as soon as possible, and I  
2 thought that was what we were talking about.

3 MR. MARK: Well, most of the work -- I  
4 can only speak for the MEA at this point.

5 A lot of the work, not most of the work,  
6 funded to date, has been -- the moneys expended have  
7 been in analysis of the initial DSP and in assisting  
8 and cross-examination to date.

9 Being quite frank with the Board, on the  
10 basis of the money spent to date I don't have reports  
11 for you to file. I have got lots of money left. I am  
12 not saying I have rashly gone ahead and spent my money  
13 where I shouldn't have, but in terms of the money I  
14 have spent to date I don't have evidence to file for  
15 you.

16 Now, it seems to me and I have got to  
17 make my decisions on what evidence I am going to bring  
18 based upon whether or not I am going to apply for and,  
19 if I apply for, get additional money. That is going to  
20 shape my evidence.

21 The Update has changed a lot of things in  
22 my client's case. Let's just look at the Planning  
23 Panel. I don't have to elaborate for you the  
24 differences at this point between planning to the  
25 median and planning to the upper.

1                   Now, I spent the first half of my money  
2     on a planning to the upper case.

3     [3:30 p.m.]

4                   Now, the evidence that I am going to file  
5     is going to depend, frankly, on what resource  
6     reallocation, either within the existing budget or with  
7     additional funds, I can bring to that. So I can't  
8     conceive of how you can expect the parties to file  
9     their reports without deciding first the issue of  
10    whether there is going to be and if so how much  
11    supplementary intervenor funding. Otherwise, you are  
12    just forcing us to spend money on reports that may be  
13    irrelevant.

14                  I don't think the intervenor funding  
15    process has to be particularly long. From my  
16    perspective, Mr. Chairman, I don't think anybody is  
17    looking at a gross reopening of intervenor funding. It  
18    certainly has to have limits. There have to be clear  
19    cases of particular need shown. I am prepared, if I am  
20    instructed to apply for it, and it's frankly an issue  
21    under consideration, I am prepared to apply within two  
22    weeks. It doesn't have to be a protracted process.  
23    Eligibility is not an issue.

24                  THE CHAIRMAN: That would be two weeks  
25    after Panel 10?

1 MR. MARK: That's right.

2 THE CHAIRMAN: Because you wouldn't know  
3 what you are asking for --

4 MR. MARK: On some issues we may not have  
5 to wait. On some we might. But I don't see this as a  
6 process going far into the fall, Mr. Chairman. I would  
7 think that the parties should be in a position to do  
8 that fairly quickly and in my conception of what the  
9 application should be about, I wouldn't think that it  
10 would take the Board a great deal of time to deliberate  
11 on them for the most part --

12 THE CHAIRMAN: It all should be done at  
13 once because the global amount is also of significance.  
14 It is speaking for myself a significance to me how much  
15 was being asked for, so I think we have to do it all at  
16 once.

17 MR. MARK: If we are, Mr. Chairman, I  
18 certainly urge you to do it at the earliest possible  
19 moments because there are many such as myself I think I  
20 will be in a position where I can't proceed with some  
21 aspects of my evidence until I know what resources I  
22 have to devote to it. Some issues are now simply more  
23 important in light of the Update and really you can't  
24 separate them out neatly without knowing what resources  
25 you have.

1                   So, therefore, Mr. Chairman, I think we  
2                   have to do intervenor funding first. I'm not sure how,  
3                   in light of that, Mr. Campbell's proposal of filing all  
4                   the evidence and then deciding on the procedure could  
5                   work within reasonable time constraints.

6                   Mr. Shepherd has before you, Mr.  
7                   Chairman, some particular proposals on the scheme for  
8                   filing of evidence and interrogatories. I don't know  
9                   if you want to hear on those issues today. It was not  
10                  my impression that those types of procedural mechanics  
11                  would be the subject of discussion today. I don't know  
12                  if that paper, that submission is up for your  
13                  determination at this point or not. So I'm frankly in  
14                  your hands.

15                 THE CHAIRMAN: Do you have some  
16                 opposition to that other than what we have we have  
17                 talked about up to now?

18                 MR. MARK: The sequence of the filing of  
19                 the evidence, the timing of the filing of the evidence  
20                 you have heard my submissions on.

21                 With respect to interrogatories, Mr.  
22                 Chairman, the MEA is of the view that it should not be,  
23                 to put it in colloquial terms, open season  
24                 interrogatories amongst the intervenors. That's not  
25                 the purpose of the exercise in my submission.

1                   The purpose, if there are to be  
2           interrogatories and I don't think it is beyond the  
3           realm of reasonableness for the Board to decide they  
4           are not appropriate as amongst intervenors, but  
5           assuming there is going to be, it seems to me, Mr.  
6           Chairman, that the purpose should be to permit the  
7           parties to understand the evidence filed by the other  
8           parties.

9                   I think it's inappropriate to have an  
10          open interrogatory process where you can use, for  
11          example, the fact that a party has filed some evidence  
12          to submit a whole raft of interrogatories aimed at  
13          finding out views of the experts on other issues,  
14          asking them to do calculations on matters which are not  
15          the subject of their testimony. I think that will only  
16          serve to protract proceedings. The parties do not have  
17          the resources for it, Mr. Chairman, and I submit it is  
18          inconsistent with what the relationship should be in my  
19          submission amongst the intervenors.

20                   To be sure, none of us suggest that there  
21          aren't opposing points of views amongst the intervenors  
22          which are going to be meeting head on in the hearings,  
23          but fundamentally the purpose is for the intervenors -  
24          and this is why they were funded, not for IPPSO to  
25          fight me and not for me to fight CEG, we were funded to



1       come and comment upon Ontario Hydro's case.

2               And that should be the primary purpose of  
3       our evidence and the interrogatories should be limited  
4       to ensuring that everybody understands the evidence  
5       which is being brought and not use us as gathering  
6       grounds for attacking Hydro's case or other agendas.

7               And let's not forget, Mr. Chairman, we  
8       have all had the opportunity to ask interrogatories ad  
9       nauseum of Ontario Hydro. If there is a piece of  
10      literature, if there is a document, if there is a  
11      theory, if there is a number in the electric utility  
12      business that we wanted, we asked Ontario Hydro for it.  
13      And I can't imagine that there is much purpose at this  
14      point in permitting the parties to go very far afield  
15      with the interrogatories amongst themselves.

16              I am coming close to the end, Mr.  
17      Chairman. You will forgive me but some of these  
18      comments are random at the end. Mr. Poch put before  
19      you this chart. I don't quite recall whether it was  
20      for the -- I guess it was for the purpose of the time  
21      division between the groups -- was that the purpose?  
22      ---Off the record discussion.

23              MR. MARK: Mr. Poch, being helpful, says  
24      I heard his submissions the first time and he won't  
25      tell me now what it's for. But that's fine.

1 [Laughter]

2 Let me just make some comments on it, Mr.  
3 Chairman. Let's just look at the three, what I  
4 understand to be the three seminal aspects of it.

5 He put in the second column under  
6 sub-parties, I guess for example under CEG, he says CEG  
7 acts for nine other entities so it's not one intervenor  
8 for the purpose of looking at the numbers. And he says  
9 Northwatch asks for 13. Well, let's do one or the  
10 other, Mr. Chairman. Let's do apples to apples and  
11 oranges to oranges.

12 The MEA has got 312 members. So let's  
13 put them down. AMPCO has got 60 members. Let's put  
14 them down and let's see how we come out. That list he  
15 has got there for you is worth nothing. Let's look at  
16 the important issue. The important issue is how many  
17 discrete parties are there here who want to put in  
18 evidence.

19 And you will see a much different  
20 balancing of the scales, Mr. Chairman. On the left  
21 side, the schedule A parties who I gather are the  
22 signatories to the agreement. I have added them up.  
23 There are 21 intervenors who wish to call evidence. On  
24 the right-hand side, the non-schedule A, there are  
25 exactly 20. So I think those balance out pretty

1 evenly, Mr. Chairman.

2 Thirdly, he has got the compilation of  
3 the hours that the people submitted back last year and  
4 he says, looking at those he has been more than  
5 generous in the time allocations. Well, Mr. Chairman,  
6 Mr. Poch was sitting here at the meeting when Ms.  
7 Morrison suggested that the numbers were extravagantly  
8 high, a number of voices cried out from this side of  
9 the room saying, well, you know, they are overstated.  
10 We are saying the maximum. Don't go by that.

11 Anybody who was there at that meeting,  
12 Mr. Chairman, knows full well that those statements of  
13 the hours are entirely inappropriate for drawing the  
14 comparison that Mr. Poch wants you to draw. Are we  
15 really to believe that we should be proceeding on the  
16 basis - and I say this with no disrespect to a  
17 particular intervenor - that the Coalition of  
18 Environmental Groups is going to have 10-1/2 days of  
19 testimony and the Ontario Public Health Coalition is  
20 going to have 24. That was never in the cards. So  
21 let's not go ahead on that basis.

22 And as to the question of the 300 versus  
23 the 200 hours, Mr. Chairman, I think it's another  
24 feature of the agreement put forward which demonstrates  
25 that inevitably it puts this Board at some peril when

1 parties start defecting because what's going to happen  
2 when Energy Probe doesn't sign up. What's going to  
3 happen when somebody else leaves. How are you going to  
4 determine whether you do it all? How many hours go to  
5 the other side of the fence, which brings me back to  
6 the basic point: the inappropriateness of having a  
7 contractual agreement to the approach to this  
8 procedure.

9 And the last thing, Mr. Chairman, with  
10 respect to the Aboriginal elders. As I indicated  
11 before, both proposals have within them room at the  
12 outset of the hearing for views which reasonably are  
13 not able to be accommodated within the other frameworks  
14 to be expressed. And in my submission that is more  
15 than sufficient.

16 Subject to your questions, Mr. Chairman,  
17 I apologize for taking so much time, those are my  
18 submissions.

19 THE CHAIRMAN: Let me just make sure I  
20 understand your correctly.

21 You envisage, (A), dealing with panel 10;  
22 then preparing what you think you need to intervene;  
23 then obtaining the funding for what's needed; then  
24 getting the reports, whatever, in the way of evidence  
25 filed; then submitting, let's accept your submission in

1 its limited way to interrogatories; and then and only  
2 then would we be ready to start the intervention. Is  
3 that what you are saying?

4 MR. MARK: That's one way, Mr. Chairman.  
5 Our preferred approach under the issue-by-issue  
6 approach is to use the rolling file

7 THE CHAIRMAN: Whatever the first issue.

8 MR. MARK: For example on load  
9 forecast --

10 THE CHAIRMAN: If it were the first  
11 issue. If it were.

12 MR. MARK: That's right.

13 I don't see any reason why we couldn't be  
14 in a position to proceed with that and I don't know  
15 that this is different from any other proposal before  
16 you in the early fall.

17 THE CHAIRMAN: Well, even to do it in the  
18 early fall to get ready for the first witness sworn in  
19 on the intervention would take some doing, wouldn't it,  
20 with the fairest wind possible?

21 MR. MARK: We can't finalize evidence  
22 until we know definitively what resources we have, Mr.  
23 Chairman, but it is not as if the parties are in a  
24 position to do anything. We are a fair way along the  
25 road.



1                   If we have, if let's say the panel 10  
2                   ends the end of June -- first of all, I am not  
3                   completely satisfied that we couldn't proceed with  
4                   intervenor funding before the end of that panel, at  
5                   least the applications, so you could hear them let's  
6                   say immediately following Panel 10 at the very end of  
7                   June.

8                   We have July and August and September  
9                   let's say to prepare prefiled evidence on the first  
10                  issue. I don't see any reason why we couldn't be under  
11                  way with evidence the middle of October.

12                 THE CHAIRMAN: All right. Now, I don't  
13                  know. These may be questions more appropriate for Mr.  
14                  Hamer. And if they are he can just take them in  
15                  advance.

16                 If we adopt the issue-by-issue approach,  
17                  it seems the first exercise is to say what are the  
18                  issues. And I think I understand from Mr. Poch that he  
19                  doesn't necessarily accept either the characterization  
20                  of the issues as Hydro did it through 11 or 10 panels  
21                  or the order in which those issues ought to be  
22                  considered.

23                 So, that would be something that would  
24                  have to be worked out. In other words, if we did adopt  
25                  an issue-by-issue approach, that would be something

1       that we would have to do.

2                   MR. MARK:  As I indicated in the written  
3       submissions, Mr. Chairman, we have put forward what we  
4       think is a reasonable issues list and allocation.  But  
5       acknowledging that many people have decided not to  
6       participate in the formulation of that at this point, I  
7       would certainly expect that you would give some  
8       consideration to having the parties try to come to some  
9       agreement; if they can't, the Board giving direction on  
10      the appropriate issues.

11                  THE CHAIRMAN:  Then I would expect not  
12      all issues are entitled, adopting your position that we  
13      can set time limits, that not all issues are entitled  
14      to the same amount of time.

15                  MR. MARK:  No, I think that's correct.  
16      Entitlement is a poor word, Mr. Chairman.  There are  
17      two factors --

18                  THE CHAIRMAN:  Entitlement is a very poor  
19      word but it may be what it winds up as.  I don't know.

20                  MR. MARK:  There are two factors.  Number  
21      one is your perception of where the resources should be  
22      allocated.  Secondly, and as importantly, the parties  
23      presumably will be in a position to tell you how much  
24      evidence they are going to be bringing on the various  
25      panels.  The estimate we have made is our sense of what

1 evidence is going to be called but it may be wrong.

2 It may be that load forecast is much less  
3 in issue now or people are going to concentrate on it  
4 less because they have other fish to fry and we have  
5 overestimated. But people will come forward and say,  
6 we are going to have witnesses or we are not going to  
7 have witnesses and we will work it out.

8 THE CHAIRMAN: And then having gone over  
9 those two hurdles, then the next one would be to then  
10 arrange issue-by-issue as I understand it how the  
11 evidence is to be presented and coordinated, and that  
12 can only be done in two ways: either by agreement  
13 amongst the parties or by the Board giving direction.

14 MR. MARK: That's right.

15 THE CHAIRMAN: And if it is done by  
16 agreement of the parties, it becomes contractual, in a  
17 sense a contractual arrangement I suppose.

18 So a contractual arrangement would be  
19 appropriate, I take it, if achievable in the  
20 issue-by-issue thing. I have some difficulty in  
21 understanding why it isn't also appropriate, because I  
22 think that's what you said a moment ago --

23 MR MARK: What was inappropriate about  
24 it, Mr. Chairman, is the contractual determination of  
25 who is pro and who is anti. I don't see how that can

1 be done by contract. If they say it's based upon a  
2 real categorization, then you have to make that  
3 determination. I say I'm opposed. Mr. Poch can't make  
4 me pro simply because he hasn't got a club that doesn't  
5 let me in.

6 THE CHAIRMAN: All right. I think I  
7 understand your position. All right. That's fine.

8 DR. CONNELL: You would join Mr. Poch's  
9 club if he let you in, Mr. Mark. [Laughter]

10 MR. MARK: Dr. Connell, I wouldn't join  
11 any club that would have me. [Laughter]

12 DR. CONNELL: One of Mr. Poch's points  
13 was he predicted a tendency of all parties to address  
14 all issues, if we go issue-by-issue. How would you  
15 cope with that?

16 MR. MARK: Dr. Connell, I think the  
17 fundamental constraint that everybody faces in this  
18 hearing is resources, whether you are funded or not.  
19 Nobody - with greatest respect to Mr. Poch - nobody is  
20 in a position to say well, you know what, I'm getting  
21 my kick at the can, so here, I am going to take a  
22 \$100,000 and bring this witness.

23 We are all struggling with trying to fit  
24 the witnesses we have already identified as being our  
25 best ones, struggling to fit them into our budget.

1 With the greatest respect to Mr. Poch, that is not  
2 going to happen much. It simply is not. Nobody has  
3 those resources.

4 DR. CONNELL: One of your points was that  
5 in the event of increasingly difficult time constraints  
6 that the issue-by-issue approach ensures a level  
7 playing field. That seems to me likely to be true only  
8 if all parties' interests span all issues. The party  
9 concerned only with the last issue on the table would  
10 be disadvantaged by that approach.

11 MR. MARK: Clearly so. It's not a  
12 perfect answer to the issue, to the problem, Dr.  
13 Connell, but it strikes me as certainly providing  
14 greater flexibility in the Board, for example, to  
15 reallocate time within issues.

16 There is nothing wrong, for example, if a  
17 party comes forward and everybody recognizes that their  
18 vital concern is this particular issue. We can't cut  
19 some time on the panel generally without sacrificing  
20 that party. Secondly, while it is not flawless, it  
21 seems to me that it is more fair than having one party  
22 put his case in, his whole case in, following a certain  
23 set of time constraints and then changing those for a  
24 later party. Call it the lesser of two evils, but I  
25 think it is.



1 DR. CONNELL: You, I think, promised  
2 improved efficiency in scheduling expert witnesses. I  
3 am anticipating we will have some witnesses who are  
4 polyvalent and who will be addressing many different  
5 issues across the Board. Would you have them come back  
6 on six or seven or eight occasions.

7 MR. MARK: I don't think anybody is  
8 contemplating six or seven or eight, Dr. Connell.  
9 Having taken a quick look, and my estimate is at the  
10 outside two or three times for a limited number of  
11 witnesses.

12 But at least panel-by-panel you have a  
13 better window of when you are going to -- you know  
14 better what the window is for when your witness is  
15 going to have to be here and you have some flexibility  
16 within that panel.

17 If you want to keep the intervenor-  
18 by-intervenor case rolling without downtime, I have to  
19 say to my witnesses, my experts, and we will all know  
20 they are busy and they have got testimonies all over  
21 North America that they are running to, I have to say,  
22 you know, we are right on after so-and-so's case.

23 [3:52 p.m.]

24 So-and-so's case may turn out to be three  
25 or four days shorter than it otherwise was. On the

1 other hand, if you know that the Hydraulic Panel was  
2 starting on a certain day and it's a day certain, you  
3 know, if my witness isn't available until three days  
4 after but somebody else is available the first day, you  
5 can accommodate it on that basis.

6 The reverse side is the logistical  
7 difficulties for counsel and for experts who do come to  
8 assist in cross-examination. To have to deal with  
9 every issue month after month after month is very  
10 expensive and creates horrible logistical difficulties.

11 And, for example, both counsel, the  
12 intervenors of two counsel are going to have to be here  
13 all the time because it's not just demand management  
14 that's being dealt with by this witness panel. They  
15 are going to deal with ten issues and you're going to  
16 be sharing the work. And when are you going to go back  
17 to your office and prepare your evidence?

18 By having all those issues repeated time  
19 after time after time, all the resources are going to  
20 be consistently focussed in this hearing room rather  
21 than outside the hearing room where they should be.

22 DR. CONNELL: You acknowledge the  
23 possibility that some parties' cases could not be  
24 subdivided by issue. Would you anticipate a standard  
25 that would oblige parties to choose one or the other?

1 That is, would you allow them to have a special  
2 presentation of their comprehensive case and also take  
3 part in the issue-by-issue presentation?

4 MR. MARK: No, Dr. Connell. And I think  
5 one of the aspects of our proposal, and I'm sure Mr.  
6 Hamer is prepared to speak to this, that if somebody  
7 considers that their case is not amenable to the issues  
8 that the Board identifies, then part and parcel of  
9 taking that option is that they do not participate in  
10 the issue-by-issue approach.

11 Tribal elders are different because those  
12 intervenors we recognize have technical aspects of the  
13 case but they also have this additional overlay, if  
14 you will, which we concede should be differently  
15 presented for the cultural reasons. But generally  
16 speaking, this proposal really makes the parties make a  
17 choice. If you don't think you are amenable to  
18 issue-by-issue, then you don't participate in that and  
19 you are in the other category.

20 DR. CONNELL: Could you describe for me  
21 the function that relates intervenor funding to the  
22 time required to present your case, speaking for your  
23 client alone? Is it linear or exponential; does it  
24 have a positive or negative coefficient?

25 MR. MARK: I'm sorry. Are we talking

1       about the time until I can present my case?

2                   DR. CONNELL: The time of the hearing  
3       required for your case.

4                   MR. MARK: I don't think there is, Dr.  
5       Connell. I think frankly speaking for my client, our  
6       case would probably be somewhat shorter. What is going  
7       on with the Update, I think for many people, is that  
8       it's highlighting that there may be fewer issues of  
9       greater significance. And so I don't think there's any  
10      necessary relationship between whether you get  
11      supplementary funding and whether your case is more or  
12      less.

13                   The simple fact of the matter, speaking  
14      to some other intervenors is that there's been a lot of  
15      wasted money on matters which are now completely water  
16      under the bridge. And so when we ask for more funding,  
17      it may not be to bring other evidence; it may be to  
18      bring the same level of evidence we had already been  
19      contemplating.

20                   DR. CONNELL: Mr. Poch stated his  
21      conviction that his proposal and yours were compatible.  
22      How do you feel about that?

23                   MR. MARK: I can't agree with that, Dr.  
24      Connell. There's only one feature of his, and that is  
25      that those 65 intervenors will present their case at

1 the end in whatever way they determine. There will be  
2 some joint effort. There will be some not joint  
3 effort. It will really be a hodgepodge.

4 And then you have another group of  
5 intervenors whom, Mr. Poch says, will have the same  
6 right. They are entirely different concepts. He says  
7 we are at liberty to present our case issue-by-issue,  
8 and I guess that's what he means when he says they are  
9 compatible. But the hallmark of our proposal is not  
10 that some intervenors present issue-by-issue; it's that  
11 everybody does.

12 I can't conceive that this Board wants a  
13 situation where we have, let's say, a number of  
14 intervenors go issue-by-issue and then we go into the  
15 same matters being dealt with intervenor-by-intervenor.  
16 Worst possible case.

17 DR. CONNELL: Thank you.

18 THE CHAIRMAN: I think we should perhaps  
19 take a break. I have down on the list yet to speak Mr.  
20 Hamer, the representative of the CNA -- who I don't see  
21 here at the moment. Mr. Rogers, and Mr. Moran. You  
22 weren't here this morning.

23 MS. OMATSU: No, I wasn't.

24 THE CHAIRMAN: Do you have submissions  
25 you want to make.



1 MS. OMATSU: Yes, I can do it now.

2 THE CHAIRMAN: I'll ask you people, how  
3 long roughly do you think you are going to take? 1.

4 How long do you think you are going to  
5 be, Mr. Hamer?

6 MR. HAMER: Fifteen to 20 minutes I would  
7 think, Mr. Chairman.

8 THE CHAIRMAN: No one from CNA?

9 MR. HAMER: I don't think so, Mr.  
10 Chairman.

11 THE CHAIRMAN: Mr. Rogers?

12 MR. ROGERS: Ten minutes.

13 THE CHAIRMAN: And --

14 MR. MORAN: About 15 minutes, Mr.  
15 Chairman.

16 THE CHAIRMAN: And how long will you be?

17 MS. OMATSU: Five minutes.

18 THE CHAIRMAN: Five minutes? Maybe I'll  
19 put you on first because you are not very comfortable  
20 with the faction group that you are here for.

21 [Laughter]

22 But perhaps Mr. Hamer will follow and  
23 then -- I don't know. We will see when we get back.  
24 It's a long day. And I anticipate, in case anyone  
25 wants to get up and remind me, that some who have

1 already spoken may want to say something after that.

2 MR. MARK: Mr. Chairman, just with your  
3 permission, if you need anything else from the MEA  
4 today, if Mr. Watson could make the submissions. I  
5 have a plane to catch. With your permission, I would  
6 like to withdraw.

7 THE CHAIRMAN: I certainly wouldn't try  
8 and prevent you from doing that.

9 MR. B. CAMPBELL: Mr. Chairman, on the  
10 same note you will be pleased to hear that I have some  
11 obligations which will result in your being left in the  
12 capable handles of Mrs. Formusa.

13 THE CHAIRMAN: Thank you.

14 ---Recess at 3:58 p.m.

15 ---On resuming at 4:17 p.m.

16 THE CHAIRMAN: Mr. Hamer.

17 MR. HAMER: Mr. Chairman, I speak, I  
18 suppose, as an orphan or a former member of the Hydro  
19 family, and I would like to make it clear at the outset  
20 that AECL is in no way a supporter of the Plan as it  
21 presently stands and is opposed to the Plan as  
22 currently updated.

23 It seems to me, Mr. Chairman, that there  
24 is the basic tension between the intervenor-by-  
25 intervenor approach and the issue-by-issue approach is

1 one between different approaches to persuading the  
2 Board to solve the problem in a certain way. The  
3 problem, of course, is to balance anticipated demands  
4 for electricity over the planning period with various  
5 means of satisfying those demands.

6 And our opposition on the procedural  
7 issue essentially adopts the hypnotic approach to  
8 administrative advocacy, which is that each party wants  
9 to have its opportunity to attempt to hypnotize the  
10 tribunal into adopting its particular view of the  
11 world. And our opposition wants first to have a  
12 uninterrupted opportunity to do that. And secondly,  
13 they want to get the last chance to hypnotize.

14 The issue-by-issue approach, in my  
15 submission, is more of a problem solving or rational  
16 approach to a massive and complex problem. The massive  
17 nature of the problem means that it is one that has to  
18 be broken down into components. And I suggest that the  
19 Independent Power Producers' motion to disapprove the  
20 Manitoba Purchase now rather than later is, in effect,  
21 an acknowledgment that it is appropriate in a hearing  
22 of this nature to break the problem down into different  
23 components and to solve them where they can be solved  
24 in a discrete manner discretely, and at least to deal  
25 with them as subcomponents of the overall problem.

1                   And, in effect, IPPSO's motion seeks to  
2                   achieve just that in order to simplify the balance of  
3                   the hearing. And that may or may not be appropriate.

4                   I would like to refer, if I may, to the  
5                   draft order which is contained in two very slightly  
6                   different versions. But for convenience for the  
7                   moment, I will refer to the version which is contained  
8                   in MEA's submission to the Board. And this is on page  
9                   3 of their submission. And at the same time, while we  
10                  have the matrix before us --

11                  THE CHAIRMAN: I'm sorry. You said page  
12                  3?

13                  MR. HAMER: It's page 3 of MEA's  
14                  submission. It's the table. I will read, without any  
15                  need for you to turn up from Mr. Shepherd's memorandum  
16                  which he filed last December, intervenors must have the  
17                  opportunity to present not only their technical  
18                  evidence but also the framework or world view within  
19                  which they understand that evidence and must be able to  
20                  propose adoption by the Board of some or all of that  
21                  framework.

22                  And we have heard a good deal of  
23                  discussion about world views or visions today. And  
24                  it's important that the matrix which we propose allows  
25                  for precisely that. Under heading No.1, those who

1 choose not to arrange themselves in B group or C group  
2 around the various issues which follow will have an  
3 opportunity to put forward a world view if they like.

4 If that is not suitable, issue two, which  
5 we have entitled: Power System Planning Principles,  
6 would equally be entitled simply: First Principles,  
7 and any party who wishes to address their world view  
8 would have the opportunity to do so there.

9 Similarly, at the end of the case, under  
10 item six, System Assessment Conclusions could simply be  
11 entitled: Conclusions. And once again, every party  
12 would have the opportunity to bring their world view,  
13 if you want to call it that, or vision, to bear on all  
14 of the evidence at that time.

15 So, there is nothing inconsistent in the  
16 issue-by-issue approach and the idea that not everybody  
17 in the world accepts Hydro's way of looking at the  
18 world. The issue headings which we have chosen have  
19 been deliberately as generally expressed as possible.  
20 And we are not wedded to those words. It needn't be  
21 those black letters.

22 What we attempt to do is simply to  
23 organize the time and to limit the time to divide the  
24 problem up. And we are quite open to suggestions from  
25 other parties as to the labels to be applied to that.



1                   Now, Mr. Shepherd also said in his  
2 memorandum, the human mind simply cannot grasp every  
3 facet of a complex problem at once. And that is  
4 exactly our point. And the intervenor-by-intervenor  
5 approach will, of course, require the Board to attempt  
6 to get every intervenor's complex, complete case in  
7 mind at once and then to pass on to the next  
8 intervenor's complex view of the world on the problem  
9 at hand. And that will happen over and over and over  
10 again. And we adopt what Mr. Shepherd says, that the  
11 human mind can't do that.

12 [4:23 p.m.]

13                   He says: The tendency, therefore, is to  
14 try to divide up into bite-sized chunks that can be  
15 understood. And we agree with that and that is a  
16 rational approach to problem-solving.

17                   Then he says, and this is where we part  
18 company: What happens when you do that? If you are  
19 lucky what happens is that you gain a good  
20 understanding of each issue - and that is not a bad  
21 idea - and get a decision that deals with each issue  
22 well - and that is a pretty good idea - but fails to  
23 hang together as a comprehensive whole.

24                   Now, our structure attempts to address  
25 the whole under heading 2 and to address the whole

1 again under heading 6, and sandwiched in the middle are  
2 the technical or one might say technological matters of  
3 how does one moderate demand, and, having attempted to  
4 moderate demand, how does one address growth in demand  
5 notwithstanding, and what are the various technologies  
6 that are available to do that?

7 I welcome the debate as to what is wrong  
8 with that way of approaching the problem, but it is the  
9 most rational that we have been able to come up with.

10 Mr. Shepherd goes on to say: Having  
11 broken the issues up into bits you decline to decide  
12 the complex problem, instead deciding a lot of simpler  
13 problems. And he indicates that there may be a  
14 tendency to prejudge each issue as you go along, and  
15 then everything else falls into place as a result of  
16 the early judgments. In my respectful submission there  
17 is no reason not to have confidence that the Board will  
18 suspend judgment until the end, having heard the  
19 evidence in some orderly manner all the way along.

20 The virtue of the order which we propose  
21 in my submission is that it provides an envelope, an  
22 overall envelope to the time.

23 The most important defect of our  
24 opposition's proposal is cross-examination. There is  
25 no overall envelope on cross-examination. I am advised

1 by Ms. Morrison that the ratio to date is roughly eight  
2 days of cross-examination to one day of direct  
3 evidence.

4 Now, that may be reduced by virtue of  
5 eliminating friendly cross-examination or  
6 cross-examination between intervenors who ought not  
7 appropriately to be cross-examining one another.  
8 However, to get from eight to one down to what our  
9 opposition proposes now, which is that for every one  
10 day of direct evidence there will be slightly less than  
11 one day of cross-examination - and that is what their  
12 numbers work out to - is overoptimistic in the extreme,  
13 in my submission.

14 The way that the table works, and take  
15 for example issue 3, Demand Forecasts and Economic  
16 Assumptions, is that A group -- and here I wish to  
17 clarify one point which Mr. Mark was questioned about.  
18 A group, the non-aligned group if you like, has the  
19 right to bank time from the first heading and carry it  
20 down one of the lower boxes on the table if they  
21 choose, so that time would go into those blank boxes  
22 there on the table.

23 B group and C group. If we take B group,  
24 for example, and the number there for demand  
25 forecasting and economic assumptions is five days, B

1 group spends five days doing three things: its direct  
2 evidence, its cross-examination of the opposing  
3 intervenors, and any cross-examination of people within  
4 the B group, what might be called sweetheart  
5 cross-examination if that is permitted.

6 The thing budgets itself. I agree  
7 wholeheartedly with the Chairman's observation that  
8 time limitations tend to produce better cross-  
9 examination and if one has only a limited amount of  
10 time to do all three of those things each party will be  
11 driven to budget the available time appropriately,  
12 knowing that it has got an overall envelope within  
13 which it must work on that issue.

14 Then, correspondingly, C group would have  
15 an equal number of days to perform exactly the same  
16 three functions.

17 I'm not saying that --

18 THE CHAIRMAN: Of course, those functions  
19 would, say, cross over. Part of A group, five days  
20 would be spent cross-examining C group and so on.

21 MR. HAMER: But that only counts against  
22 one party.

23 THE CHAIRMAN: Yes.

24 MR. HAMER: So that if you spend four  
25 days cross-examining you have only one day to tell your

1 own story, and vice versa. The longer you are spend on  
2 your own story the less time you have to cross-examine.  
3 It is self-limiting.

4 We don't say that those numbers are cast  
5 in stone. We are open to all sorts of suggested  
6 variations.

7 The 150 days at the bottom, it could be  
8 longer, it could be shorter. But it is 150 days; it is  
9 not 240 days plus whatever the real cross-examination  
10 is going to be.

11 I think we can all guarantee that  
12 cross-examination in the intervenor cases is unlikely  
13 to amount to less than examination in chief, which is  
14 what our opposition's order provides for.

15 The ratio between direct evidence and  
16 hostile cross-examination is one to something less than  
17 one under our opposition's proposal.

18 THE CHAIRMAN: Am I right that your  
19 system presupposes a consensus on these issues at least  
20 within the groups of A group, B group, and C group?

21 MR. HAMER: I am not sure what you mean  
22 by consensus as to the issues.

23 THE CHAIRMAN: Well, in other words, the  
24 time allocation of five days, there will be a number of  
25 parties sharing that five days.



1 MR. HAMER: Yes.

2 THE CHAIRMAN: So there has to be some  
3 understanding, consensus amongst those parties as to  
4 how those five days are going to be spent.

5 MR. HAMER: That's correct.

6 THE CHAIRMAN: Unless there is a  
7 direction from the Board as to how to do it.

8 MR. HAMER: There is a throwaway clause  
9 in the draft rules that says, subject to further order  
10 of the Board that that division will be done by  
11 agreement.

12 If I can just digress for a moment, Mr.  
13 Matsui was here for the Canadian Nuclear Association  
14 and was called away unexpectedly and it has been  
15 indicated to me to indicate that the CNA is in support  
16 of this proposal. I am not sure if that found its way  
17 into the record.

18 It would really be up to the Board as to  
19 whether the envelope is absolutely rigid or if it is a  
20 target or a guideline. If it were rigid I would  
21 presume that there would be some way in which one could  
22 get leave to exceed the time limits, but that is up to  
23 the Board to decide.

24 The greatest virtue, though, is that you  
25 don't have this huge volume of cross-examination that

1 is not dealt with by the proposal.

2 What also happens naturally, and we have  
3 seen this during Hydro's case, is that if, for example,  
4 demand-side management is dealt with all at once as a  
5 few parties have presented their evidence and been  
6 cross-examined there is a natural tendency for those  
7 who follow to shorten up what has immediately gone  
8 before. If do you that between September and March or  
9 April or May that same tendency will not be there, in  
10 my submission.

11 I want to speak to the idea that has been  
12 mooted that it is extremely important that everybody  
13 feel that they have a full opportunity to be heard.

14 I say this on that proposition. None of  
15 us is here in this hearing as the public. We are not  
16 the public; we are proxies for the public. We are here  
17 to ensure that all ranges of opinion and all interests  
18 amongst the greater public interest are represented  
19 here, but we are only proxies. And it doesn't matter  
20 if David Hamer goes away feeling that each and every  
21 word he wanted to say was heard, and it doesn't matter  
22 if AECL's commercial representatives feel that each and  
23 every word they want to say has been heard.

24 We are only here to ensure that the  
25 public, the full spectrum of public opinion and

1 interest are brought to bear on the problem which is  
2 before you, and this is not a case where a private  
3 party has to feel that justice as to his property or  
4 liberty has been done in its full entirety. It is not  
5 that kind of situation.

6 I emphasize again that the group A, which  
7 would include the Aboriginal elders and others like  
8 that, would not be excluded from the process overall.  
9 They would have an opportunity to bank time and to  
10 bring it down into the more technical issues, and that  
11 might involve adjusting some of the figures which are  
12 on our table, but that is a lesser matter.

13 I did not come prepared, Mr. Chairman, to  
14 address the matter of interrogatories, but having heard  
15 comment on it today -- we read the Board's  
16 communications as indicating that the order of  
17 presentation of oral evidence should be the matter for  
18 discussion today.

19 But having heard comment, and I would  
20 like to reserve our right to file or make submissions  
21 later on that if necessary, we would have a serious  
22 concern with a broad discovery-like process of  
23 interrogatories.

24 The Board can order many things, but it  
25 cannot order the impossible and it would be impossible

1 for many parties to attempt to achieve what Ontario  
2 Hydro has achieved over the past 18 months or more in  
3 answering interrogatories to expect parties of much  
4 lesser resources, and I include my own client among  
5 them, to answer the same kind of broad ranging  
6 interrogatories that Ontario Hydro has been subjected  
7 to.

8 Indeed, if we want to keep this process  
9 moving in a timely manner one terrific way to slow it  
10 down is to have an enormous process of interrogatory  
11 drafting and answering amongst so many intervenors.

12 I would suggest that a more appropriate  
13 way of dealing with that matter would be instead of  
14 interrogatories with deadlines for answers, which are  
15 only going to slow the party down in preparing to get  
16 on with their cases, would be to provide for the  
17 parties to give notice of questions to be asked on  
18 cross-examination so that no one could complain in oral  
19 evidence of having been taken by surprise.

20 It would expedite the process if parties  
21 would give notice in advance of their questions or  
22 their general areas of concern well in advance of just  
23 scoping sessions and the scoping process that we are  
24 now familiar with, but a full-ranging interrogatory  
25 process would be quite time-consuming and onerous for

1 the parties.

2 A question was asked of Mr. Mark as to  
3 what are the issues, and again, I only I guess repeat  
4 myself in saying that this description of the issues  
5 need not be cast in stone, and I would consider it to  
6 be appropriate if the Board were to adopt the  
7 issue-by-issue approach, that the Board perhaps have  
8 the parties provided with a draft order of its own for  
9 comment on matters of detail and wording, and so forth.

10 I don't think I can be of any further  
11 assistance unless there are any questions that require  
12 answer.

13 THE CHAIRMAN: Thank you, Mr. Hamer.

14 MR. HAMER: Thank you, Mr. Chairman.

15 THE CHAIRMAN: Mr. Rodger?

16 MR. RODGER: Mr. Chairman, given the  
17 comments of my friends on behalf of the issue-by-issue  
18 approach, I can be very brief.

19 I want to make one comment with respect  
20 to the Government of Ontario submission which hasn't  
21 been raised to date, and that was under the paragraph  
22 entitled: Control Over Process, and I think the  
23 government makes a valid point in that paragraph. I  
24 think as well this follows up on Mr. Greenspoon's  
25 comments earlier today, and that is, if there could be



1        somehow a process or decision of the Board which would  
2        vet the evidence which intervenors are preparing, and  
3        this would be helpful as soon as possible.

4                    As Mr. Mark alluded to in his comments,  
5        AMPCO is also in the position of unfortunately having  
6        wasted a considerable amount of funds on preparing  
7        certain evidence based on the initial 1989 Plan, which  
8        we have now abandoned in the process of shifting our  
9        focus to other issues which we see as being more  
10       relevant and more important. Any further guidance that  
11       the Board could give in that regard would be most  
12       helpful.

13                   For example, given the Update, if the  
14       Board feels that it has heard enough evidence on load  
15       forecast, for example, and you don't want to hear any  
16       more evidence on that that would be very helpful if we  
17       could learn that as soon as possible because we are  
18       still, as it were, shifting gears into focussing our  
19       efforts in new areas of evidence that we want to  
20       present to you.

21                   THE CHAIRMAN: I think, speaking for  
22       myself, we have the same difficulty that Mr. Mark has,  
23       that until we have really had a chance to digest Panel  
24       10 it is little hard to do that.

25                   I mean, in an ideal world this discussion

1 would be taking place after the Hydro case, but in  
2 order to get people's minds turned this way we are  
3 doing it earlier. But I think that is one of the  
4 difficulties.

5 But I take your point.

6 MR. RODGER: It really leads to my next  
7 point, Mr. Chairman, and that is the question of  
8 funding.

9 As you know, my client did not seek  
10 intervenor funding at the outset of this process and I  
11 haven't received final instructions on that matter, but  
12 I can't say that we will not be asking for it. In any  
13 event, certainly given the changes more frequent  
14 interim cost awards would certainly go a long way to  
15 help our client in this process. As I say, I will  
16 leave that for another day.

17 There has been talk about interrogatories  
18 between parties and, as well, I wasn't aware that this  
19 was to be an issue to be discussed today but we have  
20 the similar reservations as the MEA and others have  
21 suggested.

22 The time involved and the expense of an  
23 open process of interrogatories between parties in our  
24 view would be crippling, and we also see that adding  
25 months to this hearing process. The time that the

1 evidence was reviewed, questions drafted and submitted,  
2 interrogatories responded to, motions for disputed  
3 interrogatories, the questions of supplementary  
4 interrogatories, we see that as adding months to the  
5 process and should be avoided.

6 If I could respond to one observation of  
7 Dr. Connell, Mr. Poch had said that the issue-by-issue  
8 approach could have the result of providing the  
9 irresistible temptation, I believe are Mr. Poch's  
10 words, for parties to address every issue.

11 I can advise you, Dr. Connell, that my  
12 client has had the exact opposite effect by proceeding  
13 along this issue-by-issue basis. We have, in fact,  
14 through our discussions with other parties in adopting  
15 this approach, seeing where their evidence is  
16 proceeding and developing, and as a result, we have cut  
17 back on areas that other people will be covering  
18 adequately and have a much more focussed view,  
19 particularly in light of the Update.

20 So for our situation it has been entirely  
21 the opposite of Mr. Poch's submission.

22 Now, the time period and the duration for  
23 the intervenor cases I would also like to give one  
24 comment to, and that is to start with a more limited  
25 time period than what Mr. Shepherd's group has

1 proposed.

2 If we need more time, then we can adjust  
3 and add time, but I think it would be a mistake to  
4 start from the position of 18 months and to add. It  
5 seems to be a natural tendency, if we have a certain  
6 amount of time we will reach that and go beyond. So if  
7 we start on an ambitious time frame and have to prolong  
8 that, that is one thing. But as my client has offered  
9 right from the start, we are very concerned that if  
10 this thing extends to a long period of time then it  
11 will really going to test the value of this process and  
12 it will not serve anybody's interest.

13 In terms of having hearings outside of  
14 Toronto, we take no position generally with that.  
15 However, if there were to be hearings in the North  
16 certainly Sudbury would be a choice for AMPCO in that  
17 we have given letters in the past to the Board  
18 requesting that the Board visit INCO so that they will  
19 be allowed to see the role of energy and the importance  
20 of electricity specifically in the industrial sector.  
21 So that would certainly be a preferable site from our  
22 point of view in that we could combine that site visit  
23 with the hearing of evidence at that location.

24 Those are all my submissions, Mr.  
25 Chairman.

1 THE CHAIRMAN: Thank you. Ms. Omatsu?

2 [4:42 p.m.]

3 MS. OMATSU: Good afternoon, Mr.  
4 Chairman, Dr. Connell, Ms. Patterson.

5 Today I appear on behalf of NAPA as agent  
6 for Don Colborne, NAPA's counsel. Lorne Clarke, NAPA's  
7 case manager was present during the day and he has  
8 advised me of the discussions that have taken place.

9 I don't have any specific instructions  
10 about the issues raised by MEA. And just on the point,  
11 it seemed that we are being asked, all the parties are  
12 being asked to put their feet into one pair of shoes.  
13 And it seems as in any collective bargaining situation  
14 where you are going to have a negotiated settlement in  
15 the end, a settlement will come out, what you would  
16 want is that although every party will come away from  
17 the table feeling slightly unhappy, but at least they  
18 will feel that the discomfort on their feet is most  
19 evenly divided. And I suppose that's why NAPA feels  
20 probably most comfortable with the CEG proposal because  
21 it allows for the greatest diversity and if you will  
22 following the shoes analogy, it has the largest shoe  
23 size.

24 However, saying that, NAPA has not  
25 consented to be part of the CEG club; like Groucho



1 Marx, it does not prefer to be a member of any club  
2 that would have it as a member either.

3 And the reason for that is they see  
4 themselves as very particular intervenors, northern  
5 intervenors, non-Status, generalist, aboriginal people.  
6 They don't feel that their interests neatly coincide or  
7 fit into anyone else's box, as you would.

8 They oppose the issue-by-issue  
9 presentation and they propose to present their case in  
10 its entirety. They feel that they would be prejudiced  
11 in a situation where they had to attend to hear and to  
12 cross-examine issue-by-issue, given that their counsel  
13 and their board of directors are all in Thunder Bay and  
14 around Lake Nipigon; and that they would have the  
15 strongest voice, their voice would be the strongest if  
16 it was heard in its entirety as opposed to little notes  
17 off on the side on each issue.

18 In terms of satellite hearings, NAPA of  
19 course would encourage and invite the Board to attend  
20 in Thunder Bay and I think we can assure them that they  
21 would be hospitably welcomed. They would also be  
22 prepared to discuss the location with other counsel in  
23 terms of a northern site satellite location.

24 In terms of timing, I am informed that  
25 NAPA would be prepared to present its evidence in

1 November of this year and that they could have their  
2 witness statements prepared by the end of September.

3 I would like to inform you that Mr.  
4 Poch's list in terms of the time estimate has been  
5 revised by NAPA and presently they estimate that they  
6 would take three days.

7 THE CHAIRMAN: Sorry, three days?

8 MS. OMATSU: Three days.

9 THE CHAIRMAN: To present their case?

10 MS. OMATSU: Yes, sir.

11 THE CHAIRMAN: Does that include  
12 cross-examination?

13 MS. OMATSU: That does not include  
14 cross-examination. And Mr. Clarke has prepared the  
15 division of the time in the three-day period. And it  
16 is here as a letter to the Board from Mr. Colborne in a  
17 letter dated May 13th of 1992. And it was to update  
18 their September submission.

19 In terms of costs, NAPA will be asking  
20 for additional interim costs because in part their  
21 funding was reliant on research of ARC and OMAA. And  
22 as I myself, and you are all aware, all too familiar,  
23 OMAA has not been a party to these hearings for the  
24 past seven months and NAPA does not feel that its  
25 research and its case can rely on OMAA's research and

1       its funding.

2                       Unless you have any specific questions  
3       for me, Mr. Chairman, that is NAPA's position.

4                       THE CHAIRMAN: Thank you very much, Ms.  
5       Omatsu.

6                       MS. OMATSU: Thank you very much.

7                       THE CHAIRMAN: Mr. Moran.

8                       MR. MORAN: Mr. Chairman, I am going to  
9       comment briefly first on the issue of satellite  
10      hearings. There was a suggestion from Mr. Kapashesit  
11      earlier on that the Government, according to his  
12      understanding, was opposed to satellite hearings.

13                      I don't have any knowledge of whether  
14      that is actually the case or not. Ms. Marlatt  
15      indicated she would be interested in meeting with  
16      interested parties to discuss possible solutions to the  
17      issue of how Aboriginal evidence is going to be put  
18      before this panel, and I have indicated to her that we  
19      are very willing to meet with her on that and we will  
20      report back to you on those discussions hopefully very  
21      soon.

22                      Turning to the process issue for  
23      intervenor cases, I want first just to look at the  
24      suggested calendar which I believe you have in front of  
25      you just to explain a couple of items on that. There

1. were two columns labelled A and B and these weren't  
2. columns meant to indicate different camps. I didn't  
3. realize that A and B was being used extensively to  
4. indicate different camps when I first put that there.

5. All that is represented by those two  
6. columns is simply two different start dates. In column  
7. A, the assumption is that Panel 10 would end at the end  
8. of June. Column B, the assumption is that Panel 10  
9. would not end until the start of the summer break. But  
10. that's all that's there and it's at this point it seems  
11. more likely that B would be the likely scenario.

12. I will come back to the calendar in a  
13. moment. My written submissions, already filed,  
14. contained three elements. The first element was to  
15. have written direct evidence filed by everybody by the  
16. same date. The second element was to have written  
17. responses to be filed by those wishing to do so, again  
18. by a fixed date. And the third element was the  
19. establishment of a schedule and structure for  
20. cross-examination by the panel.

21. I want to briefly discuss the rationale  
22. behind those three elements. To begin with, the first  
23. element, the suggestion that there be a common filing  
24. date. There are four reasons why I have made this  
25. suggestion. We have heard extensive comments from two

1 camps I guess today about the pros and cons of each,  
2 and this is really an attempt to try and reconcile and  
3 obtain as many benefits from both camps as possible by  
4 eliminating as many of the difficulties associated with  
5 each camp as possible.

6 So turning now to those four reasons.  
7 The first reason for the requirement for written direct  
8 evidence will be the fact that there were about 200  
9 intervenors and this has been referred to previously  
10 that there is perceived strategic advantages and  
11 disadvantages relating to the order of presentation.

12 We have seen a preview of that with  
13 respect to the order of cross-examination on panel by  
14 panel and certainly we have been involved in that  
15 strategic manoeuvring as it were. This issue  
16 essentially is going to be avoided if everybody has to  
17 file their direct case, their direct evidence at the  
18 same time. There simply isn't any strategic advantage  
19 to be obtained by going first or last since everybody  
20 is going at the same time in effect.

21 The second reason for this element is  
22 that every intervenor I believe needs to have the  
23 opportunity to receive all the cases of all the other  
24 intervenors and give each intervenor the opportunity to  
25 coordinate its response to those cases. There are



1 experts and consultants on retainer to various  
2 intervenors and the file of direct evidence can be  
3 supplied to these experts and reviewers and reviewed by  
4 them in a rationale and efficient manner.

5 The alternative would be to be waiting  
6 for the stuff to come forward as things are filed on a  
7 rolling basis, as suggested by one camp, or waiting for  
8 a case to be presented if we go by the  
9 intervenor-by-intervenor approach.

10 I believe that this would be a very  
11 important advantage for the panel too. If you have all  
12 the cases in front of you and you are going to now read  
13 them, you have the opportunity to start organizing  
14 those cases to your own advantage. We all will have  
15 the same advantage.

16 The third reason for this particular  
17 element is that one of the main concerns expressed by  
18 the group that has come up with the signed contract,  
19 one of the main concerns that they have expressed is  
20 that they are very concerned about the organization and  
21 structure of their cases being broken up because of an  
22 issue-by-issue approach.

23 If their direct case is to be filed, it  
24 can be filed in one complete way in the way that they  
25 would want to and the breaking-up issue simply doesn't

1       arise.

2                       And then the fourth reason is this: that  
3       in the majority of environmental assessment hearings  
4       there are ongoing discussions between all of the  
5       parties aimed at negotiation and settlement of various  
6       issues. At this point in this hearing, however, this  
7       hasn't been possible to any realistic degree at all  
8       because we simply don't know what the cases and issues  
9       of concern are of most of the intervenors except  
10      through trying to guess what underlies the  
11      cross-examination.

12                     Once all of the direct cases are on the  
13      record in front of everybody, I think we have now a  
14      real opportunity to start narrowing down the issues  
15      outside of the hearing room to the extent that they  
16      can. We simply haven't had the opportunity to do that  
17      before and I believe that process at least has the  
18      opportunity to take place if everybody has seen  
19      everybody else's direct case.

20                     Moving to the second element then, and  
21      that is to have every intervenor who wishes to file a  
22      response, a written reply to any other case that they  
23      were interested in doing so, again by fixed date. The  
24      rationale for this is, first of all, to give the panel  
25      a clear indication of where the real controversy lies.

1 Again we can guess where the controversies lie based on  
2 cross-examination to date, but we will have a really  
3 good idea of this once we see the reply.

4 It would in effect be an indication by  
5 intervenors that this is where they are going to  
6 cross-examine in and this is why they want to  
7 cross-examine in this area, and this has to be useful  
8 to the panel. In addition, it's going to be useful to  
9 other parties as well because they will understand  
10 where other parties are coming from in terms of their  
11 cross-examination.

12 And then turning to the third element  
13 which relates to cross-examination. Essentially the  
14 Board, having read the direct cases, having read the  
15 filed responses, will have an opportunity to determine,  
16 keeping in mind the nature of the decisions that have  
17 to be made by the Board, that is, is the environmental  
18 assessment acceptable and is the undertaking  
19 approvable, keeping in mind those two decisions, which  
20 is why we are all here, the Board will have an  
21 opportunity to reinforce what it must already have in  
22 its collective mind, as it were, a conceptual picture  
23 of the nature of the decision that has to be made.

24 And when this picture becomes clearer,  
25 having read all of the direct cases and the responses,

1 the Board has a real opportunity to take real control  
2 of the process so that we end up with a decision that  
3 relates directly to the kind of decision that has to be  
4 made by the Board.

5 In my submission, the panel has both all  
6 the jurisdiction it needs and it has an obligation to  
7 control its own process specifically to determine what  
8 issues and evidence are either relevant or significant  
9 with respect to the two decisions to be made. It will  
10 be a perfect opportunity in my submission as well for  
11 the panel to start scheduling cross-examination in a  
12 manner that makes real sense because everything is more  
13 or less on the table at this point.

14 The other advantage would be that the  
15 Board will be able to determine which intervenors are  
16 essentially saying the same thing on particular issues  
17 and to give those intervenors the appropriate direction  
18 that would be aimed at reducing duplication.

19 So those are the three elements that are  
20 contained in my written submission. The final part of  
21 my submission today relates to how the rules of natural  
22 justice tie into this. A review of the cases suggests  
23 that the basic rule that applies here is the audi  
24 alteram partem rule, and all those cases say that the  
25 content of that rule will vary with the context of the

1 particular process that's under way.

2 The basic elements are essentially three:  
3 one is the opportunity to prepare a response; two, is  
4 the opportunity to be heard; and three is  
5 representation by counsel. The cases again suggest  
6 that not all of these elements are all necessary. That  
7 doesn't really arise in this hearing because so far the  
8 process has been that all of these elements are  
9 included anyway; everybody has been able to take  
10 advantage of all three aspects of that rule.

11 In my submission, the proposal I have put  
12 forward is one that continues to meet all of those  
13 requirements. People continue to be able to  
14 represented by counsel. People continue to have the  
15 opportunity to be heard, not necessarily through the  
16 spoken word but obviously through the written word.  
17 And certainly people have the opportunity to prepare  
18 responses to the cases that are coming out.

19 To conclude then and just to go back to  
20 the calendar. And I am only going to look at column B.  
21 I don't believe that column A is necessary to look at.  
22 There is a date of September 30, 1992, for the  
23 preparation and filing of direct evidence. As I  
24 indicated earlier, this is based on the starting point  
25 that Panel 10 will be finished by the summer break.



1 The Board will be taking a month off; presumably other  
2 people will also be taking holidays. But there is  
3 about 2-1/2 months of time from the beginning of the  
4 summer break to September 30th to allow parties to put  
5 together their case and to file that.

6 Presumably the Board will be occupied  
7 with reading all the cases and it's open to the parties  
8 to send interrogatories and also to start preparing the  
9 responses to other cases, and you will see a second  
10 date of November 30th.

11 On the issue of interrogatories, in my  
12 submission the Board should give serious consideration  
13 to the scope of that process. I think different  
14 principles apply to the interrogatory process under the  
15 scenario that I have put forward.

16 The basic philosophy behind  
17 interrogatories is to give parties the opportunity for  
18 discovery. This will have largely been achieved if  
19 parties have been required to file their direct  
20 evidence already. We will have had probably the best  
21 discovery that's possible. And in my submission, the  
22 only thing that would be left to be served by the  
23 interrogatory process would be simply to ask questions  
24 that are aimed at clarification and understanding of  
25 cases that have been filed. So this would be quite a

1 limited use of the interrogatory process.

2 And then the rest of the timetable is  
3 self-evident. Under the final line, I have decision  
4 with question mark. Included in that would obviously  
5 have to be some consideration of how final argument  
6 would take place, whether it be written or oral, and I  
7 haven't assigned any time to that.

8 THE CHAIRMAN: But you are contemplating  
9 that no matter when it starts, either December 15th or  
10 January 12th, that all the intervenor evidence would be  
11 completed by June 30th --

12 MR. MORAN: Yes. The reason for that was  
13 that it recognizes simply that there will be a certain  
14 amount of time off over Christmas and it may be a plus  
15 or minus a few days either way.

16 THE CHAIRMAN: But more interestingly, I  
17 think that you are suggesting that all the intervenor  
18 evidence can be heard in about 75 days, roughly  
19 speaking?

20 MR. MORAN: That's correct. The Board  
21 would require a couple of months I think to read the  
22 direct evidence. My personal experience has been that  
23 I can sit here for six hours to hear all of the  
24 evidence presented during those six hours or I can take  
25 the transcript and read it in two hours. I mean there

1 is real genuine time savings to be achieved through  
2 reading the evidence as opposed to listening to it.

3 And on that basis, all that's left is  
4 cross-examination. And I think the Board will be in a  
5 very good position, having seen what everybody is  
6 saying, to organize an efficient and full  
7 cross-examination of the issues that are actually  
8 relevant to your decision.

9 [5:02 p.m.]

10 And not only relevant but also  
11 significant to your decision. So those are my  
12 submissions subject to any further questions.

13 MS. PATTERSON: Well, I guess the  
14 Aboriginal group's problem with your proposition was  
15 that they didn't get to give any evidence at all unless  
16 somebody was going to cross-examine.

17 MR. MORAN: Well, part of everything that  
18 I have said is that everybody gets to give evidence.  
19 The question I think specifically with the potential  
20 Aboriginal witnesses is can they put their evidence in  
21 writing or can they be heard orally. And as I said at  
22 the outset, I'm meeting later on with at least  
23 Constance Marlatt and her client to discuss that point.  
24 I have made some suggestions to her which I think she  
25 finds favourable. But we shall wait and see what her

1 instructions are. But I believe there is a way to  
2 accommodate that.

3 MS. PATTERSON: And have you been  
4 canvassing for allies for your proposal?

5 MR. MORAN: Well, I have heard today  
6 several indications that there isn't a real objection  
7 to at least the filing of direct evidence from both  
8 sides. Whether that is enough support for the whole  
9 proposal, I don't know.

10 I believe that this is a median ground  
11 and is compatible with either one. The difficulty I  
12 have is that if we choose one, intervenor-by-intervenor  
13 as opposed to the other, issue-by-issue or vice versa,  
14 we are accepting all of the advantages of that one  
15 system, but we are also accepting all of the  
16 disadvantages. And really what I was hoping to achieve  
17 in this proposal was to eliminate some of the  
18 disadvantages associated with each and incorporate some  
19 of the advantages associated with each; and  
20 specifically, the strong concern that's been expressed  
21 today that many intervenors simply don't want their  
22 case broken up into little pieces as under the  
23 issue-by-issue approach. A whole case presented  
24 directly in writing is not broken up; and that seems to  
25 be a very major concern.

1 THE CHAIRMAN: But essentially, am I  
2 right that your proposal is the same as the non-issue  
3 group except that you would impose much more controls  
4 over the process and limit the extent of the time that  
5 was spent on giving evidence in cross-examination?

6 MR. MORAN: When you get to the point  
7 where you have to decide what will be cross-examined,  
8 or not, I think that's the best point at which you can  
9 decide whether we should go issue-by-issue or  
10 party-by-party. Because then you will actually have  
11 seen what the parties want to tell you. In fact, they  
12 will have already told you because they filed it and  
13 you would have read it.

14 THE CHAIRMAN: So the cross-examination  
15 scheduling that you are proposing could be mixed up in  
16 many, many different ways. There is a number of  
17 scenarios you could develop for that.

18 MR. MORAN: That's right. And one of the  
19 points that I would make at this stage is I think it's  
20 a bit premature to start putting time limits and  
21 organizing cross-examination in the absence of actually  
22 seeing what the cases are, whether they come out  
23 through an issue-by-issue way or intervenor-by-  
24 intervenor method. But ultimately, when we get to that  
25 point you will have read all of the direct evidence.



1 That's all on the record now. And cross-examination  
2 will really only be another six months or so because we  
3 will have saved considerable time in reducing and  
4 scoping the extent and nature and requirement for  
5 cross-examination. I think it makes scheduling much  
6 easier and it keeps the control in the Board's hands.

7 THE CHAIRMAN: Thank you.

8 MR. MORAN: Thank you, sir.

9 THE CHAIRMAN: I think we have now heard  
10 from everybody for the first time. Who wishes to make  
11 submissions in reply?

12 Mr. Shepherd, Mr. Poch, Mr. Greenspoon.  
13 Anyone else? Mr. Watson.

14 MR. R. WATSON: I may want to make some  
15 submissions based on what I hear, Mr. Chairman.

16 THE CHAIRMAN: That's fine. Anyone else?  
17 You first, Mr. Shepherd?

18 MR. SHEPHERD: Right.

19 THE CHAIRMAN: All right. And then Hydro  
20 at the end, if they wish to.

21 MR. SHEPHERD: I think I have about five  
22 minutes, Mr. Chairman. Let me start with the last. To  
23 my knowledge I have not yet spoken to anybody who  
24 supports the government's proposal. And certainly my  
25 client so opposes it, doesn't deem it worthy of

1 comment.

2 THE CHAIRMAN: The only difference  
3 between your proposal, essential difference, is the  
4 control of process.

5 MR. SHEPHERD: No, I don't believe that's  
6 correct at all, Mr. Chairman. I believe that the  
7 essence of Mr. Moran's proposal is that no party has a  
8 right to call or an opportunity to call any oral  
9 evidence unless the Board has determined from written  
10 evidence that it wishes to hear specific evidence from  
11 a specific witness. That is not my view of what a  
12 public hearing is.

13 THE CHAIRMAN: Okay.

14 MR. SHEPHERD: With respect to Mr. Mark's  
15 and Mr. Hamer's submissions, most of it I won't comment  
16 on. It's been discussed already. There are written  
17 submissions all over the place. Mr. Mark, I guess, is  
18 no more a commercial lawyer than I am a litigator. The  
19 agreement, which is a binding contract, does not say,  
20 as he says, that the Aboriginal elders go first.  
21 That's simply in English right there.

22 The agreement does not say that  
23 cooperation is a condition of the -- sorry -- that the  
24 order is a condition of our cooperating. And, in fact,  
25 I think it's fair to say that the parties that are

1 parties to that agreement have made it obvious  
2 throughout this process to date that they are prepared  
3 to take the lead on cooperating with each other. And I  
4 hope we have been doing so with at least some measure  
5 of success, although not as much as anybody would have  
6 hoped.

7           The agreement does not say that these are  
8 65 parties who, as long as you get the order right, bad  
9 guys first, good guys second, that they want to, after  
10 that, no rules. What the agreement does say very  
11 specifically that we will file by a specific date a  
12 detailed order and division of the cases of all of  
13 those parties, names of witnesses, time limits, all of  
14 that in detail for the Board's approval.

15           And if the Board doesn't see the logic of  
16 it and doesn't feel that it's suitable, then the Board  
17 can amend it and it's still binding on us. In  
18 practice, I think what Mr. Mark is saying is if your  
19 proposal, you guys over there, if your proposal doesn't  
20 fit in with my, Mr. Mark's, perceived category, then it  
21 simply isn't valid. If it doesn't fit into the boxes  
22 that I have in my mind, then it isn't a valid proposal.

23           Well, with the greatest respect to Mr.  
24 Mark, that's exactly the problem with the  
25 issue-by-issue approach is that it requires everything

1 everybody has to say to fit into preconceived boxes.

2 And that's not the way the world works.

3 And finally Mr. Mark asks, is the  
4 agreement between the parties dependent upon those  
5 parties going first? Well, I read the agreement over  
6 again, and it seems to me that that's exactly what it  
7 says. And I didn't have any problem understanding that  
8 from the agreement. The agreement says, these parties  
9 go first, these parties go second.

10 As to the rationale behind that, it seems  
11 to me that everyone in this hearing except perhaps  
12 Ontario Hydro, and even that's not clear, opposes the  
13 plan more or less. It is, however, a supply plan. And  
14 we have supporters of central supply and we have  
15 opponents of central supply. And it's a plan about  
16 central supply.

17 It would seem that on the simplest logic  
18 that I can see, the supporters of a central supply plan  
19 approach should go first and then the opponents should  
20 go afterwards. However, Mr. Mark also reminds us that  
21 CAESCO is also on the so-called supply side and IPPSO  
22 is the so-called demand side. I won't comment on his  
23 allocation of IPPSO because, obviously, he hasn't been  
24 listening to us for the last year. With respect to  
25 CAESCO, I have no idea why they are on that side. And

1 at some point I'll probably figure it out. Two other  
2 comments.

3 MS. PATTERSON: Just before you go on, I  
4 don't think you have really addressed Mr. Mark's  
5 question about what happens to the agreement if your  
6 group can't go last.

7 MR. SHEPHERD: That's a fair question. I  
8 think that different people have different reasons for  
9 their insistence on that order and different priorities  
10 on that issue. IPPSO, for example, wouldn't pack up  
11 and go home if we were asked to go as part of the first  
12 group rather than the second group. We wouldn't like  
13 it, but if we had to we would do it.

14 I think there are other parties who would  
15 say they can't make their case that way. They just  
16 can't do it. We have different motivations and  
17 different rationales for it, so we have different  
18 opinions about it. So I think the answer is I don't  
19 know.

20 Mr. Hamer talks about limiting  
21 cross-examination. As I think the Board knows clearly  
22 by now, absolute limits on cross-examination are simply  
23 impossible because cross-examination is a dialogue  
24 between a questioner and an answerer. And you have to  
25 limit one or the other.



1                   Either you have to limit the questioner's  
2                   time, impose a limit on them, or the answerer's time  
3                   and impose a limit on them. And whichever one you  
4                   limit gives the other one the advantage. So what Mr.  
5                   Hamer is suggesting, in effect, is that we should all  
6                   go away and tell our witnesses be as verbose as  
7                   possible because you are using up the other side's  
8                   time.

9                   And, in fact, we saw that in Panel 9. We  
10                  saw the Panel 9 witnesses taking a long time to answer  
11                  questions so that one-and-a-half day crosses were  
12                  three-day crosses. That's just not sensible. I'm not  
13                  suggesting that was intentional, please.

14                 MRS. FORMUSA: What are you suggesting?

15                 MR. SHEPHERD: I'm suggesting it  
16                  happened. Now, then my final point is this.

17                 Sorry, I didn't mean to be offensive,  
18                  really.

19                 THE CHAIRMAN: Excising the example, the  
20                  point is a valid one. There are two participants in  
21                  the cross-examination, the questioner and the answerer.  
22                  And I suppose, if we want to be, the ultimate  
23                  responsibility for keeping it in bounds rests up here.  
24                  But my experience has been that, I don't know why I'm  
25                  talking about this, but the more you intervene in

1 cross-examination, the longer it takes.

2 MR. SHEPHERD: That's exactly right.

3 MS. PATTERSON: Unless you give a limit  
4 in the first place.

5 MR. SHEPHERD: My final point is this.  
6 Mr. Mark has talked about the level playing field  
7 argument. He said, if we go intervenor-by-intervenor,  
8 then what happens when things change? We have to go  
9 back and we have got all that stuff to look at again.  
10 Maybe I'm just being overly simplistic. But it does  
11 seem to me that whenever something changes, everything  
12 that has gone before, whether it was done on an  
13 issue-by-issue basis or on an intervenor-by-intervenor  
14 basis, everything that has gone before may be affected  
15 by the change; and, therefore, we have to deal with how  
16 to handle the change.

17 But the way we order the cases will not  
18 affect that in the least. So, for example, if we have  
19 a new load forecast and we have already done all our  
20 evidence on load forecast, then we have to figure out a  
21 way to come back and deal with the impacts of the  
22 change. And that's true on the issue-by-issue approach  
23 or the intervenor-by-intervenor approach. And I don't  
24 see where the order makes a difference. Those are my  
25 submissions.

1 THE-CHAIRMAN: Thank you, Mr. Shepherd.

2 THE CHAIRMAN: Mr. Poch?

3 MR. D. POCH: Starting with that last  
4 point, Mr. Chairman, what happens if there is a change?  
5 I think clearly there's a trade-off here. If you want  
6 internally consistent cases, then spreading out our  
7 cases risks that internally they won't be cohesive or  
8 coherent and you won't be able to attest whether it  
9 holds up as scenario.

10 I think we are faced with the problem of  
11 incomparable, to some extent, scenarios between  
12 different parties already because Hydro's scenario was  
13 presented earlier.

14 With respect to, Mr. Mark's comments, he  
15 made the point of talking about the virtue of the  
16 issue-by-issue approach, that there would be similar  
17 time constraints on similar issues and, therefore, are  
18 you would somehow gain some control on that. Yet Mr.  
19 Hamer talks about being able to bank the time and move  
20 it to other issues.

21 [5:16 p.m.]

22 So the only comment I can make is they  
23 seem to be making inconsistent submissions on that and  
24 whichever way you go the other must suffer.

25 Mr. Mark refers to groupings being

1 necessary in our approach but not as necessary in his  
2 approach, and somehow in our approach we have to define  
3 who is in favour, who is against.

4 I would say groupings are necessary in  
5 either approach because the way these approaches work,  
6 the whole object of this is to get the Board out of the  
7 difficult problem of having to allocate time to parties  
8 before having heard what their case is, in effect  
9 weighing how much time to give them before you have  
10 heard them, and throw that into the lap of the  
11 intervenors who can be -- who can peer at each other's  
12 cases and bully each other.

13 Indeed, from our perspective, apart from  
14 this question of who goes first, what we are saying is,  
15 yes, it is a club. That's precisely why it works,  
16 because those within a club can club one another, and,  
17 you know, the fact that the -- I agree that if you have  
18 two clubs and you can't decide which is for supply and  
19 against then it may not help you resolve the question  
20 of who goes first. But at least you have got two  
21 groups which you can with more confidence allocate time  
22 to on a global basis and then let us fight amongst  
23 ourselves to divide it up. And we all have an  
24 incentive to be fair to one another because we all have  
25 a common goal.

1           On the issue-by-issue approach we won't  
2   all have common goals with those who we will seek to be  
3   allocating issue time to, and we will have opposite  
4   agendas. Clearly, if we can bank and move things  
5   between issues that is ameliorated, but then, of  
6   course, there is no real allocation of time between  
7   issues.

8           The question of whether people are  
9   entitled to cross-examine one another or for that  
10   matter entitled to ask interrogatories of one another,  
11   we certainly agree there is merit in controlling, as I  
12   said already, controlling cross-examination of like  
13   interests, but I think both on cross-examination and  
14   particularly with respect to interrogatories there  
15   remains a need to be able to do that in some cases.

16           With respect to MEA, for example, they  
17   are part of the history and the presumptions about how  
18   conservation will be delivered. We must be able to ask  
19   them interrogatories about their position on that, how  
20   they can facilitate or not.

21           With respect to AECL we have Hydro coming  
22   forward with a plan that includes potentially CANDU  
23   600s. We have cost estimates from AECL. We have Hydro  
24   referring us to AECL on high-level waste, what have  
25   you. Clearly, we have to be able to test that evidence



1 by testing AECL on it, and I think interrogatories are  
2 simply a way of shortening the hearing proceedings.  
3 And there is a basic rule of thumb here: Them that  
4 gives, gets. So there is some disincentive upon us  
5 to -- we don't want to go overboard.

6 Now, Mr. Mark said you don't need to find  
7 in favour of our agreement to impose a time limit on  
8 us. Our point here is really simple. We have  
9 confidence we can effectively meet a time limit, manage  
10 a time limit. Our confidence in that capability is  
11 enhanced if we can orchestrate our cases, if we can  
12 give people more options in how they can present and  
13 how they can overlap and how they can combine panels  
14 and so on. And to the extent we lose control over our  
15 cases by being slotted into an issue-by-issue approach  
16 we simply have less confidence in our ability to  
17 squeeze one another effectively, and it is really that  
18 simple.

19 You will, I assure you, have our  
20 cooperation whatever way you go on this. It is just a  
21 question of how great our confidence is in being  
22 effective in that cooperation.

23 The point has been made about whether it  
24 is pro or against the Plan, and simply put, the  
25 question before you under the Act is whether to give

1     approvals to those things requiring approvals. There  
2     are some that are seeking you to issue approvals, there  
3     are some that are seeking you not to issue approvals.

4             The question was asked by...I think it  
5     was Mr. Mark about, well, what happens to Energy Probe?  
6     If they leave the group does that mean we just have  
7     more time to share? Clearly not. If an allocation of  
8     time is made to a camp if people leave the camp the  
9     Board or we will have to volunteer to relinquish time  
10    or the Board will have to take time away from us, no  
11    question about that.

12            I apologize for jumping around.

13            There was a question of supplementary  
14    funding. I would simply on behalf of my own client  
15    indicate that we will need some time after, I would  
16    think after the summer break to be able to pull  
17    together a proposal.

18            I had assumed that that -- we have been  
19    sort of going that way because I had assumed that that  
20    was how the Board wanted to proceed; we wanted to see  
21    the end of Hydro's case, we wanted to see the end of  
22    this process about how we are going to proceed, have a  
23    better sense of what we are going to need. To some  
24    extent it is a chicken-and-egg problem, but I just  
25    raise that concern.

1                   Now, the split of time. I could argue  
2           that Greenpeace has hundreds of thousands of members  
3           and we can play this game about how you count heads. I  
4           think that the only rational way to look at this is the  
5           Board will be aware there are certain parties here who  
6           have more significant, in terms of time, cases to  
7           present to you.

8                   In the pro supply camp, if you will, I  
9           can readily identify MEA, AMPCO, AECL and CNA. I don't  
10          know whether they're going to collapse their case into  
11          one... So there is four, five, perhaps a few more.

12                  On those opposed to supply off the top of  
13          my head we have CEG, Northwatch, Energy Probe, IPPSO,  
14          North Shore Tribal Council, MRJBC, NAPA, Voice of  
15          Women, CAC, MDAB, perhaps OMAA - I don't know what the  
16          status is - Pollution Probe, and I think some of those  
17          obviously are not as large as others, but I think you  
18          can see the ratio there.

19                  And then there are going to be  
20          individuals and smaller -- when I say 'smaller' I mean  
21          intervenors with a shorter time requirement in both  
22          camps, which you could simply multiply that ratio. And  
23          I would think it is fair to observe that there are more  
24          smaller intervenors and individuals in our camp than in  
25          the pro supply camp.

1                   So all that in simply turning -- in  
2       response to Mr. Mark's point about how you count  
3       parties.

4                   I readily acknowledge that this is not a  
5       simple problem, and it might be something where there  
6       has to be some form of negotiation or head banging. I  
7       haven't really figured out how to do that yet.

8                   Now, Mr. Mark, and Mr. Hamer I think too,  
9       said there is no new paradigm that will fall out of the  
10      sky, and I suppose that is what people who enjoyed Mr.  
11      Newton's physics said before Mr. Einstein, and I'm sure  
12      that is what people said of Mr. Einstein's physics  
13      before the quantum mechanics promoters came on the  
14      scene.

15                  I can assure you, there are new paradigms  
16      that are going to fall out of the sky. They may be  
17      more or less of a surprise. I hope they are not too  
18      much of a surprise to the Board. I am sure they will  
19      be a surprise to Mr. Hamer and Mr. Mark who don't seem  
20      to be able to understand that.

21                  I can look at their list of issues and  
22      show you, for example, how they believe load  
23      forecasting and conservation assessment are two  
24      distinct questions, and I can tell you my clients can  
25      find no basis to distinguish those questions in the

1 main... Obviously, there are sub-aspects of each which  
2 can be distinguished.

3 The same with respect to the order of  
4 presentation. The paradigm of the supply industry is  
5 do a load forecast, see how much you can meet with  
6 conservation, the rest must be met with supply; whereas  
7 my clients say: What are the horrors of supply and how  
8 far should we go to avoid that? One example of how the  
9 order that we would come at this would change.

10 I hope that neither Mr. Hamer nor myself  
11 will be successful in hypnotizing you. I trust we  
12 won't. I wouldn't suggest we could do that.

13 With respect to this question of  
14 controlling cross, which is put forward as the strength  
15 of the issue-by-issue proposal, I have to agree with  
16 Mr. Shepherd. It is a dialogue that I don't see that  
17 there is tremendously effective potential any more in  
18 that approach than in ours.

19 To the extent the Board is able to  
20 identify mechanisms and means to control the length of  
21 cross I don't see how they are any less applicable in  
22 our approach either. We are going to have a running  
23 tally. We have to split our time between cross and  
24 chief. We can do that in our scenario equally as  
25 effectively.



1                   Mr. Hamer made the point that we are all  
2           just proxies for the public interest. Well, while I  
3           appreciate his point I think it also has to be said,  
4           some parties here have a commercial interest and some  
5           here represent individuals, many individuals, who are  
6           worried about how they are being represented and how  
7           decisions are being made, how democracy is being  
8           managed, how their health and environment and that of  
9           their grandchildren is being affected.

10                   I am not suggesting that Mr. Hamer isn't  
11           worried about his grandchildren, but I am sure it is  
12           clear that his primary charge is an immediate  
13           commercial and constraining interest whereas ours is  
14           much different. And I think therefore, and I am not  
15           suggesting the Board doesn't appreciate this point, but  
16           that people sense that they have had their day in court  
17           is a very important part of the process and it is not  
18           to be ignored.

19                   With respect to Mr. Moran's proposal, I  
20           can't resist but observing that he would have you  
21           curtail matters as we move along, and I just wish he  
22           had taken that position earlier on scoping.

23                   The difficulty I see with his proposal is  
24           the only evidence after having seen it -- and I am not  
25           speaking against the filing of evidence, written

1 evidence, perhaps by both sides and perhaps written  
2 reply early on, although I have spoken already of the  
3 difficulties of timing. But I am not sure that it will  
4 help you eliminate evidence if you...

5 I think the charge that would be made is  
6 you can't place any weight on evidence without at least  
7 allowing cross-examination. It is possible, I suppose,  
8 that you could say we would like to -- we have received  
9 that evidence, we are going to place some weight on it,  
10 does anybody wish to cross? And if nobody wishes to  
11 cross there won't be any. But there is nothing new  
12 about that. If no one wishes to cross they wouldn't  
13 cross.

14 So you could only, in effect, shelve, put  
15 aside evidence which you had decided you weren't going  
16 to place any weight on, and I can't imagine there is  
17 going to be very much that you would be prepared to  
18 decide that up front. It would have to be completely  
19 irrelevant.

20 So I am not sure how Mr. Moran's proposal  
21 would, as he has put it, shorten things, except to the  
22 extent that the filing of cases early, everybody's  
23 cases, and having a breathing space for everybody to  
24 digest that, and then have experts file reply pieces,  
25 that, I think, that is an innovation which could

1 perhaps shorten the oral evidence.

2 Conceivably, if we can come up with some  
3 scoping, some negotiation, you know, or other  
4 technique, that would obviously be another opportunity  
5 after that phase to exercise it more effectively.

6 MS. PATTERSON: But wasn't Mr. Moran's  
7 point that the biggest saving of time would be in not  
8 having people repeat their written evidence in direct?

9 MR. D. POCH: I heartily accept that  
10 suggestion from him, and I certainly agree that the  
11 better and more complete written evidence is and the  
12 more time the Board has had to digest it, then the less  
13 need to emphasize and reiterate it in oral evidence.

14 Of course, the downside of that is the  
15 more time we need to prepare that evidence because it  
16 is that much more important and there may be some --  
17 there is a tradeoff, obviously.

18 Those are my submissions.

19 THE CHAIRMAN: Mr. Watson, have you got  
20 anything to say?

21 MR. R. WATSON: No reply.

22 THE CHAIRMAN: Anybody else?

23 I'm sorry, Mr. Greenspoon. I forgot Mr.  
24 Greenspoon. And then Mr. Hamer.

25 MR. GREENSPOON: I just wanted a couple

1 of comments, Mr. Chairman.

2 As I said in my opening statement, that  
3 our case doesn't fit in with the proposals by Mr. Mark  
4 because it is a vision of supply, a supply alternative  
5 for Northern Ontario, and we plan on presenting that  
6 vision with the assistance of lay witnesses. So it  
7 gets very complicated to follow Mr. Moran's suggestion  
8 as well as following the suggestions of MEA.

9 I think that we certainly will file our  
10 reports as they become available as we did with the  
11 radioactive tailings report, which has already been  
12 filed for use in Panel 9, but I think it would be fair  
13 to say when we file all our reports that will not  
14 necessarily give you an outline of our case, nor would  
15 it, in my submission, allow you to say what you wanted  
16 to hear or what you didn't want to hear.

17 So I think that we are kind of halfway  
18 between the Aboriginal groups and the other intervenors  
19 at this hearing where we have a case that is dependent  
20 upon the citizens of Northern Ontario to present in  
21 concert with our experts who will show how we can have  
22 a local, indigenous, sustainable supply for Northern  
23 Ontario.

24 I am not suggesting one form or the other  
25 is more appropriate. I just think that the reason we —

1 signed on with the group that we did was we thought it  
2 had the most flexibility because it allowed both  
3 processes to go forward.

4 THE CHAIRMAN: I suppose I just say  
5 parenthetically that some of the reports, from at least  
6 a couple of the intervenors and probably more, have  
7 already been utilized in cross-examination and they  
8 will then be promoted to the extent applicable to  
9 evidence, and I suspect that sometime parties will make  
10 that known so that we can sort of consolidate. I just  
11 throw that out as something while I am thinking of it.

12 Mr. Hamer?

13 MR. HAMER: Yes. 'Just to clarify, with  
14 respect to the banking of time, Sections 3(c) and  
15 Section 4, which you needn't turn up, of our proposed  
16 rules clearly provide for the banking of time, the  
17 trading of time between issues and between parties.

18 I was the draftsman of the rules and they  
19 appeared in Mr. Mark's materials, but I am the expert  
20 on the mechanics of the details.

21 Secondly, anyone who would encourage his  
22 witnesses to spin out their answers on cross-  
23 examination and to suggest that they go on and on in  
24 answering the cross-examiner is dumb. No one would do  
25 it.



1                   Thirdly, I haven't seen anywhere in the  
2 materials any issue arising out of the various filings  
3 by the parties of what they propose to call evidence  
4 on. I haven't seen one issue that wouldn't fit in one  
5 box or another in some way.

6                   Thank you, Mr. Chairman.

7                   THE CHAIRMAN: Mrs. Formusa? I take it  
8 there is no one else, am I right, before I ask Mrs.  
9 Formusa and wind up the proceedings?

10                  MRS. FORMUSA: Nothing. You are waiting  
11 for some golden words?

12                  THE CHAIRMAN: Pardon?

13                  MRS. FORMUSA: No. Thank you, Mr.  
14 Chairman.

15                  MS. PATTERSON: -- comment on  
16 interrogatories?

17                  MRS. FORMUSA: I will make no comments on  
18 any interrogatories. Thank you.

19                  MR. D. POCH: Mr. Chairman, I should say  
20 though on that interrogatory question, a number of our  
21 interrogatories to Hydro have been refused and they  
22 have said, go ask whoever, and we have waited.

23                  THE CHAIRMAN: Yes, I understand.

24                  All right. It is getting late. Two  
25 things.

1                   One, I do repeat my appreciation not only  
2           of the work that was done before but the work that was  
3           done today. I think it is fairly obvious that these  
4           are not easy questions; there are some very difficult  
5           issues to resolve.

6                   I would say that I hope that everyone  
7           just doesn't give a sigh of relief and say, okay, it is  
8           in the Panel's hands now and we don't need to worry  
9           anymore. I would want the discussions to continue in  
10          whatever form that parties consider appropriate.  
11          Particularly, I would hope that the proposal made by  
12          Ms. Marlatt be picked up and proceeded with, and they  
13          shouldn't necessarily have to wait for us to do that.

14                  I do offer our services if at any point  
15          in time you either think that you can get some help  
16          from Ms. Morrison or Mr. Nunn or from the Panel that  
17          there is something you want to have resolved, we are  
18          certainly available to do that, and this I consider to  
19          be an ongoing process. It is a difficult one.

20                  Eventually, I recognize that we are going  
21          to have to say what is going to happen, but we want to  
22          work out as well as we can in a cooperative fashion the  
23          best way to do it.

24                  I think in some ways it is a rather  
25          interesting and somewhat exciting enterprise.

1                   So with that we will stop for the  
2 weekend, and on Tuesday we will resume with the Panel  
3 10.

4       ---Whereupon the hearing was adjourned at 5:37 p.m. to  
5       be reconvened on Tuesday, May 19th, 1992 at 10:00  
6       a.m.

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